

STATE OF NEW YORK

9346

2025-2026 Regular Sessions

IN ASSEMBLY

December 10, 2025

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

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

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

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relation to procedures and administration of essential city services and the authority of such city to impose taxes; and making appropriations to advance moneys for the establishment of the city of Staten Island and the city school district of the city of Staten Island

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

1		THE CITY OF STATEN ISLAND ACT
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38		Staten Island.
39	12-001-12-020	Municipal assistance corporation for the city of New York;
40		revenues.
41	13-001	Taxes; tax collection authority.
42	14-001	Administrative code of the city of Staten Island.
43	15-001	Appropriations; transition government and establishment of

1 the city of Staten Island.
2 15-002 Appropriation; city school district of the city of Staten
3 Island.
4 16-001 Severability.
5 17-001 Effective date.

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

8 § 1-002. Legislative history, findings and intent and statement of
9 purposes. 1. The legislature hereby finds, determines and declares:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 § 1-003. Definitions. As used in this act, the following terms shall
43 have the following meanings:

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

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

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

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

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

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

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

46 § 2-001. Charter of the city of Staten Island. The city charter of
 47 the city of Staten Island is enacted to read as follows:

48 Charter of the City of Staten Island

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12 CHARTER OF THE CITY OF STATEN ISLAND

13 Preamble

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

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

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

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

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

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

45 The City of Staten Island can serve as a model for the promotion of
46 the common welfare, the guarantor of individual liberties and the guard-
47 ian of the social, spiritual, economic and cultural concerns of its
48 inhabitants.

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

53 Chapter 1
54 General Provisions

1 § 1-01. Incorporation.

2 The citizens of the State of New York from time to time inhabitants of
3 the territory in the County of Richmond, included in the boundaries set
4 forth in section 1-02 of this chapter, shall be known as the City of
5 Staten Island, and shall be a municipal corporation in perpetuity under
6 the name of "The City of Staten Island."

7 § 1-02. Boundaries.

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

24 Chapter 2

25 Powers of the City

26 § 2-01. Powers.

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

34 § 2-02. Purposes.

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

39 Chapter 3

40 Mayor

41 § 3-01. Executive power.

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

44 § 3-02. Election; term.

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

49 § 3-03. Qualifications.

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

53 § 3-04. Deputy mayor.

54 The mayor shall appoint and at pleasure remove a deputy mayor who
55 shall have such powers and duties as may be assigned by the mayor and

1 who shall act temporarily as mayor in case of the mayor's temporary
2 inability, absence or illness as is provided by this charter.

3 § 3-05. Removal of the mayor.

4 The mayor may be removed from office by the governor upon charges and
5 after service upon him or her of a copy of the charges and an opportu-
6 nity to be heard in his or her defense. Pending the preparation and
7 disposition of charges, the governor may suspend the mayor for a period
8 not exceeding thirty days.

9 § 3-06. Succession.

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

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

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

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

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

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

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

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

8 § 3-07. Appointment and removal of officers and employees.

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

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

19 § 3-08. General Powers.

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

22 (b) The mayor shall have the power:

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

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

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

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

36 5. to call special sessions of the council;

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

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

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

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

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

55 (c) Notwithstanding any other provision of law, the mayor shall have
56 the powers of a finance board under the local finance law and may exer-

1 cise such powers without regard to any provision of law prescribing the
2 voting strength required for a resolution or action of such finance
3 board, provided, however, that whenever the mayor determines that obli-
4 gations should be issued and the amount thereof, the mayor shall certify
5 such determination to the comptroller who shall thereupon determine the
6 nature and term of such obligations and shall arrange for the issuance
7 thereof.

8 Chapter 4
9 Common Council

10 § 4-01. Legislative power.

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

14 § 4-02. Number, election and terms of office of council members.

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

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

34 § 4-03. Qualifications.

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

42 § 4-04. Organization.

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

47 § 4-05. Vacancy.

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

55 (b) Within seven days of the occurrence of a vacancy in the council,
56 the mayor shall proclaim the date for a special election to fill the

1 vacancy required by this subdivision and such election shall take place
2 thirty days after said proclamation. The mayor shall provide notice of
3 such proclamation to the city clerk and board of elections and publish
4 notice thereof, and the board of elections shall mail notice of such
5 election to all registered voters within the district in which the
6 vacancy has occurred and shall conduct such special election thirty days
7 after the proclamation.

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

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

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

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

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

26 § 4-06. Powers.

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

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

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

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

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

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

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

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

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

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

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

52 § 4-07. Clerk of the council.

53 (a) The council shall appoint a clerk who shall perform such duties as
54 may be prescribed by law. The clerk so appointed shall be the clerk of
55 the council and shall serve at the pleasure of the council. The clerk
56 shall attend the meetings of the council, keep a journal of its

1 proceedings and discharge such other duties as may be prescribed by this
2 charter or other law.

3 (b) The clerk shall keep each local law passed in a book provided for
4 that purpose, with proper indices, which book shall be deemed a public
5 record of such local laws, and each local law shall be attested by said
6 clerk. The clerk shall cause to be published all notices, advertising
7 matters or proceedings as required by the provisions of this charter or
8 by other law. It shall be the duty of the clerk to keep open for
9 inspection at all reasonable times the records and minutes of the
10 proceedings of the council.

11 § 4-08. Investigations.

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

24 § 4-09. Local laws.

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

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

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

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

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

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

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

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

4 § 4-10. Districting commission.

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

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

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

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

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

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

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

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

29 § 4-11. Powers of the districting commission.

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

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

36 § 4-12. Community advisory boards.

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

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

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

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

Chapter 5
Comptroller

§ 5-01. Election; term.

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

§ 5-02. Powers and duties.

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

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

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

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

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

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

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

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

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

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

§ 5-03. Qualifications.

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

4 § 5-04. Deputy comptroller.

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

13 § 5-05. Vacancy.

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

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

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

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

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

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

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

48 Chapter 6

49 The Budgetary Process:

50 Expense and Capital

51 § 6-01. Budgetary responsibilities of the mayor.

52 (a) The mayor shall annually prepare and submit to the council prelim-
53 inary and executive budgets, each of which shall present a complete
54 financial plan for the city and its agencies for the ensuing fiscal year
55 and the three succeeding fiscal years. Each such budget shall consist of

1 three parts: the expense budget, which shall set forth proposed appro-
2 priations for the operating expenses of the city including debt service,
3 and interfund transfers; the capital budget and program, which shall set
4 forth proposed appropriations for capital projects; and the revenue
5 budget, which shall set forth the estimated and anticipated revenues and
6 receipts of the city, as well as any other anticipated sources and uses
7 of funds.

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

17 § 6-02. Spending pursuant to appropriations.

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

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

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

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

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

52 (b) The head of each agency of the city, and each entity the majority
53 of the members of whose board are city officials or individuals
54 appointed directly or indirectly by city officials, shall, on or before
55 the fifteenth of October in each year, submit to the mayor and the coun-
56 cil, in such form as the mayor shall prescribe, a statement of the

1 sources, amounts and disposition of all money received by such agency or
2 entity, or by a unit or officer of such agency during the preceding
3 fiscal year, other than money appropriated for the use of such agency or
4 entity by the council, or money paid by such agency or entity into the
5 city treasury and reported in the annual report of the comptroller for
6 such fiscal year. The mayor shall ensure that copies of such statements
7 are available for public inspection, and shall designate a city officer
8 to maintain copies of such statements for such purpose.

9 § 6-03. Fiscal year.

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

12 § 6-04. Budgetary process and timeline.

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

15 (a) Ten-year capital strategy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (p) Veto of the mayor.

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

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

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

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

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

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

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

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

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

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

53 2. If, as a result of the exercise of the mayor's veto, the amount of
54 the budget for the ensuing fiscal year differs from the amount of the
55 budget approved by the council, not later than two days after the budget
56 is finally adopted the mayor shall prepare and submit to the council a

1 statement setting forth the amount of the budget for the ensuing fiscal
2 year, and the council shall, if necessary, fix new annual tax rates.

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

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

12 (r) Fixing of tax rates.

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

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

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

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

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

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

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

50 (t) Appropriation, certification and publication.

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

56 (u) Council completion of assessment rolls.

1 At such annual meeting to adopt the budget the council shall cause to
2 be set down in the assessment rolls, opposite to the several sums set
3 down as the valuation of real property, the respective sums, in dollars
4 and cents, to be paid as tax thereon, rejecting the fractions of a cent.
5 It shall also cause to be added and set down the aggregate valuations of
6 the real property, and shall transmit to the comptroller of the state by
7 mail a certificate of such aggregate valuation.

8 (v) Collection of real property tax.

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

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

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

24 § 6-05. Format of expense budget departmental estimates, preliminary
25 expense budget, and executive expense budget.

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

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

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

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

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

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

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

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

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

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

32 § 6-06. Preliminary expense budget.

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

48 § 6-07. Contents of the executive expense budget.

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

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

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

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

1 (iii) an amount, as certified by the comptroller, equal to the average
2 of all expenditures during each of the five preceding fiscal years for
3 the payment of the expense of the removal of snow and ice, exclusive of
4 salaries and wages of regular employees of the city except for overtime
5 work and for work on Sundays and holidays, and exclusive of the purchase
6 of equipment;

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

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

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

17 (vii) a reserve for unanticipated contingencies.

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

23 3. The terms and conditions under which appropriations shall be admin-
24 istered.

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

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

30 1. an explanation;

31 2. itemized information and supporting schedules;

32 3. recommendations for any changes in revenue sources and fiscal oper-
33 ations;

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

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

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

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

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

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

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

50 8. an explanation of principal changes in performance goals and indi-
51 cators;

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

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

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

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

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

7 § 6-08. Adoption of expense budget and memorandum of understanding.

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

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

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

40 § 6-09. Appropriations for goods, services or construction.

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

55 § 6-10. Expense budget administration.

1 (a) Except as otherwise provided by law, no unit of appropriation
2 shall be available for expenditure by any city agency until schedules
3 fixing positions and salaries and setting forth other expenses within
4 the units of appropriation are established pursuant to the adopted budg-
5 et, the administration of which is subject to the provisions of this
6 chapter, the state civil service law, and other applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

55 § 6-11. Budget modification.

1 (a) Subject to the quarterly spending allotments and aggregate posi-
2 tion and salary limits established pursuant to applicable provisions of
3 this charter, of the state civil service law and of other law, changes
4 in schedules, within units of appropriation, may be made by the head of
5 each agency. Any such changes shall be reported to the mayor and the
6 comptroller not more than ten days after the effective date thereof, and
7 shall be made available for public review upon adequate notice.

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

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

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

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

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

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

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

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

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

47 § 6-12. Quarterly account of council budget.

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

52 § 6-13. General fund.

53 All revenues of the city, of every administration, department, board,
54 office and commission thereof, and of every other division of government
55 within the city, from whatsoever source except taxes on real estate, not

1 required by law to be paid into any other fund or account shall be paid
2 into a fund to be termed the "general fund."

3 § 6-14. Expenditure reports.

4 Any public or private agency, authority, corporation, board or commis-
5 sion which receives city funds and is not otherwise subject to the
6 requirements of section 6-10 of this chapter shall submit quarterly
7 reports of the expenditure of such funds to the mayor in such form and
8 detail as the mayor may prescribe.

9 § 6-15. Self-dealing among members of the governing boards of charita-
10 ble institutions.

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

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

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

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

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

35 § 6-16. Definitions of capital projects and budget terms.

36 As used in this charter:

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

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

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

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

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

52 (i) streets and parks;

53 (ii) bridges and tunnels;

54 (iii) receiving basins, inlets and sewers, including intercepting
55 sewers, plants or structures for the treatment, disposal or filtration

1 of sewage, including grit chambers, sewer tunnels and all necessary
2 accessories thereof;

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

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

6 (vi) any combination of the above.

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

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

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

21 1. purposes and public to be served;

22 2. programs to be conducted in the facility;

23 3. gross and net amounts of space and bulk for any building or struc-
24 ture and for areas for different functions and activities;

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

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

28 6. total estimated project costs, including costs for site acquisi-
29 tion, preparation and tenant relocation, design, construction and equip-
30 ment;

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

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

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

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

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

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

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

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

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

6 1. any capital asset

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

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

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

23 § 6-17. Format of departmental estimates for capital projects, prelim-
24 inary capital budget and executive capital budget.

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

38 § 6-18. Preliminary capital budget.

39 The preliminary capital budget statements shall consist of:

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

42 (b) departmental estimates for capital projects as provided in section
43 6-19 of this chapter together with the cash flow requirements and
44 proposed sources of funding for each project included in such estimates;

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

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

52 § 6-19. Executive capital budget.

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

55 1. a brief description and the location of each project; the total
56 estimated cost of the project; the appropriations which have been previ-

1 ously adopted for this project; the amount of appropriations recommended
2 to be adopted for the ensuing fiscal year the aggregate amount of which
3 shall not exceed the amount in the mayor's certificate; the amount of
4 appropriations required thereafter to complete the project; the sources
5 of funds for the project including state, federal, private and other
6 funds; the period of probable usefulness; the estimated additional annu-
7 al maintenance and operation costs; and any terms and conditions of the
8 project; the estimated dates of completion of final scope, final design
9 and final construction; and

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

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

15 1. a statement for each of the three succeeding fiscal years of the
16 total dollar amounts necessary to complete projects initiated in prior
17 years and projects proposed in the executive budget the amounts neces-
18 sary for projects proposed to be initiated in future years and the
19 amounts necessary for amendments and contingencies; and

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

23 § 6-20. Amendment.

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

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

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

40 § 6-21. Restrictions on capital projects.

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

55 (b) Funds included in the capital budget for a capital project that
56 are not obligated or committed during the fiscal year in which appropri-

1 ated shall not be obligated or committed in the subsequent fiscal year
2 unless reappropriated in a subsequent capital budget or an amendment
3 thereto. A capital project included in a capital budget that is not
4 initiated by the expenditure of funds within two years after its inclu-
5 sion in the budget shall be eliminated from the budget.

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

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

19 § 6-22. Site selection.

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

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

25 § 6-23. Project initiation; commitment plan.

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

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

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

51 (d) The mayor shall require each agency to prepare and submit periodic
52 reports, in regard to the progress of its capital projects, including
53 schedules and clear explanations of any delays for particular projects
54 and summary information on each agency's record on such matters. Such
55 reports shall be published at least three times each year: within ninety
56 days of the adoption of the capital budget; with the preliminary capital

1 budget; and with the executive capital budget, copies of such reports
2 shall be transmitted by the mayor to the council. Such reports shall
3 include, for each project, the dates set in the adopted capital budget
4 for the completion of scope, design, and construction and any changes in
5 such dates.

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

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

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

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

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

29 § 6-24. Improvements payable other than by city.

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

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

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

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

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

53 § 6-25. Standards for capital projects.

54 The mayor shall prepare general standards and cost limits for catego-
55 ries of capital projects and standards for the preparation of the scope
56 of project for capital projects of various types. Such standards and

1 limits shall be submitted by the mayor to the council for review. The
2 proposed standards shall become effective thirty days after they have
3 been filed with the council unless within that time the council modifies
4 or disapproves them or part of them, after conducting a public hearing.
5 Any modification by the council shall be subject to disapproval by the
6 mayor in accordance with provisions of this charter and any such disap-
7 proval shall be subject to override by the council in accordance with
8 this charter.

9 § 6-26. Scope of project.

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

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

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

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

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

36 § 6-27. Design of capital project.

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

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

48

Chapter 7

49

Planning Department

50 § 7-01. Planning department.

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

54 § 7-02. Planning director.

1 The mayor shall appoint and shall have the power to remove the plan-
2 ning director, who shall have had at least five years of appropriate
3 professional land use experience. The planning director shall be the
4 head of the planning department, and shall be responsible for the proper
5 conduct of the affairs of the department and for the execution of the
6 planning program prescribed in this charter and in local laws and rules
7 consistent herewith.

8 § 7-03. Powers, duties and functions.

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

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

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

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

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

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

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

28 7. administer the zoning and subdivision local laws or resolutions and
29 rules and regulations adopted thereunder and any regulatory laws or
30 resolutions which may be adopted to supplement or replace such resol-
31 utions;

32 8. recommend periodic amendments to zoning resolutions and subdivision
33 laws or regulations, and provide opportunity for taxpayers to recommend
34 periodic amendments to zoning resolutions and subdivision laws or regu-
35 lations;

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

40 10. establish procedures for the review of land utilization applica-
41 tions;

42 11. review subdivision plats and zoning petitions;

43 12. approve applications for special permits and variances within the
44 jurisdiction of the department of city planning under the zoning resol-
45 ution;

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

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

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

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

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

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

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

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

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

25 § 7-04. General plan.

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

43 § 7-05. Development plans.

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

53 § 7-06. Adoption of the general plan and development plans.

54 (a) The mayor shall submit annually to the council such plans that
55 will include a general plan, four-year and one-year development plans
56 for all property within the city limits. The council shall adopt the

1 general plan or revisions thereof and development plans or amendments
2 thereto by local law. Any local law or resolution adopting or revising
3 the general plan shall be laid over for at least two weeks after intro-
4 duction. The mayor shall not certify as to the necessity for the immedi-
5 ate consideration of any general plan, development plans, or revisions
6 or amendments thereto. Public notice shall be provided at least ten days
7 before adoption by the council. Upon adoption, every local law or
8 resolution shall be presented to the mayor, and the mayor may approve or
9 disapprove it pursuant to applicable provisions governing the approval
10 or disapproval of a local law or resolution. If the mayor approves the
11 local law, the mayor shall sign it and return it to the clerk; it shall
12 then be deemed to have been adopted. If the mayor disapproves it, he or
13 she shall return it to the council with his or her objections stated in
14 writing. The council at its next regular meeting may reconsider the same
15 and if the votes of two-thirds of all the council members be cast in
16 favor of repassing such local law, it shall be deemed adopted, notwith-
17 standing the objections of the mayor.

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

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

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

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

29 § 7-07. Board of Appeals.

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

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

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

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

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

55 § 7-08. Meetings.

1 Meetings of the board shall be held at the call of the chair and at
2 such other times as the board may determine. The chair, or in his or her
3 absence the acting chair, may administer oaths and compel the attendance
4 of witnesses. All hearings before the board shall be open to the public
5 and shall be before at least three members of the board, and a concur-
6 ring vote of at least three members shall be necessary to a decision to
7 grant an application or an appeal, to revoke or modify a variance,
8 special permit or other decision of the board, or to make, amend or
9 repeal a rule or regulation. The board shall keep minutes of its
10 proceedings, showing the vote of each member upon every question, or if
11 absent or failing to vote, indicating such fact, and shall also keep
12 records of its examinations and other official action. Such minutes and
13 such records shall be public records.

14 § 7-09. Powers and duties.

15 The board shall have the power:

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

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

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

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

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

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

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

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

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

1 § 7-10. Procedure on appeals.

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

3 (b) Such appeal may be taken within such time as shall be prescribed
4 by the board by general rule, by filing with the officer from whom the
5 appeal is taken and with the board a notice of appeal, specifying the
6 grounds thereof. The officer from whom the appeal is taken shall forth-
7 with transmit to the board all the papers constituting the record upon
8 which the action appealed from was taken.

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

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

19 Chapter 8
20 Franchises

21 § 8-01. Franchises.

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

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

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

32 Chapter 9
33 Contracting

34 § 9-01. Procurement.

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

39 § 9-02. Conditions.

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

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

47 § 9-03. Procedures.

48 All contracts shall be awarded in accordance with the following proce-
49 dures:

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

53 (b) The comptroller shall, in accordance with provisions of this char-
54 ter and with practices promulgated by state law, certify all contracts,

1 within thirty days of receipt of such contract, provided there is no
2 cause not to certify. If the comptroller determines that a contract
3 cannot be certified, he or she shall so notify the mayor and the common
4 council within thirty days of receipt of such contract. Reasons not to
5 certify shall include but not be limited to debarment of
6 vendors/contractors, unreasonable and/or onerous terms and conditions,
7 financial problems or inconsistencies, and any other major cause not
8 advantageous to the city that the comptroller can identify and justify
9 through appropriate documentation.

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

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

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

35 § 9-04. Notification of contract opportunities and awards.

36 Each agency shall publish in the appropriate publication and in news-
37 papers of city, state or national distribution and trade publications,
38 notice of:

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

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

46 (c) the comptroller shall promulgate rules providing for the publica-
47 tion and content of notices of contract actions required by this chap-
48 ter. Such rules shall include but not be limited to provisions regarding
49 the timing and frequency of notices, the required duration of sollicita-
50 tion periods, and the form and content of notices.

51 § 9-05. Agency contract files.

52 Each agency shall maintain files containing all information pertaining
53 to the solicitation, award and management of each contract of the agen-
54 cy. The agency contract files shall contain copies of each determi-
55 nation, writing or filing required by this chapter pertaining to a
56 contract including the circumstances under which the procurement was let

1 in accordance with section 9-02 of this chapter, and copies of all costs
2 effectiveness analyses. Agency contract files shall be open to public
3 inspection with adequate protection for information which is confiden-
4 tial.

5 § 9-06. Centralized contract and contractor information.

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

10 (a) a copy of the contract;

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

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

14 (d) information regarding the contractor's qualifications and perform-
15 ance;

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

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

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

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

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

27 § 9-07. Adverse impact on public employees.

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

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

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

51 Chapter 10

52 Referendum and Amendment

53 § 10-01. Referendum on pending legislation.

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

4 (b) The people shall have the power to require the council to vote on
5 proposed bills and resolutions by initiative petition. Each initiative
6 petition shall support a bill or resolution which has been introduced in
7 the council and shall be signed by five per centum of the total votes
8 cast on Staten Island at the previous general election.

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

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

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

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

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

34 § 10-02. Charter amendment.

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

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

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

1 appropriate judicial district shall determine any question arising there-
2 under and make such order as justice may require as prescribed in the
3 state election law.

4 Chapter 11

5 Property of the City

6 § 11-01. Inalienable property.

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

15 § 11-02. Authority to acquire real property.

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

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

40 § 11-03. Disposal of property of the city.

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

43 Chapter 12

44 Personnel Management

45 § 12-01. Declaration of intent.

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

- 49 1. preserve and promote merit and fitness in city employment;
- 50 2. ensure that appointments and promotions in city service are made,
51 and that wages are set, without regard to political affiliation, and
52 without unlawful discrimination based on sex, race, color, religion,
53 religious observance, national origin, disability, age, marital status,

1 citizenship status or sexual orientation; and promote and support the
2 efficient and effective delivery of services to the public.

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

8 § 12-02. Department; personnel director.

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

15 § 12-03. City civil service commission.

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

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

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

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

1 lishing time schedules, for the hearings and determinations authorized
2 by this section.

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

6 (f) The commission shall prepare and transmit directly to the mayor
7 departmental estimates as required by this charter. The mayor shall
8 include such proposed appropriations for the commission as a separate
9 agency in the preliminary and executive budgets as are sufficient for
10 the commission to fulfill the obligations assigned to it by this charter
11 or other law.

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

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

19 1. to recruit personnel;

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

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

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

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

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

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

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

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

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

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

54 12. to establish and enforce uniform procedures and standards to be
55 utilized by city agencies in establishing measures, programs and plans
56 to ensure a fair and effective affirmative employment plan for equal

1 employment opportunity for minority group members and women who are
2 employed by, or who seek employment with, city agencies. Such procedures
3 shall include a time schedule for the development of such plans which
4 provides for the preparation by each agency of a draft plan, the review
5 of such draft plan by the department of personnel, the equal employment
6 practices commission, and such other agency as the mayor requires, and
7 the consideration by the agency of any comments received on such draft
8 plans prior to the adoption of a final plan as required by section 12-05
9 of this chapter;

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

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

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

25 (b) The personnel director shall have the following powers and duties
26 with respect to the personnel management functions assigned to city
27 agencies pursuant to subdivisions (a), (b), (c), and (d) of section
28 12-05 of this chapter:

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

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

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

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

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

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

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

54 8. to annually publish and submit to the mayor, council and the
55 commission on equal employment practices a report on the activities of
56 the department of personnel and city agencies to provide fair and effec-

1 tive affirmative employment practices to ensure equal employment oppor-
2 tunity for minority group members and women who are employed by, or who
3 seek employment with, city agencies. Such report shall include, but not
4 be limited to, an analysis of the city government workforce and appli-
5 cants for such employment by agency, title and classification; a
6 description of each agency's employment practices, policies and
7 programs; an analysis of the effectiveness of the city's efforts to
8 provide fair and effective affirmative employment practices to ensure
9 equal employment opportunity for minority group members and women who
10 are employed by, or who seek employment with, city agencies; and such
11 legislative, programmatic and budgetary recommendations for the develop-
12 ment, implementation or improvement of such activities as the personnel
13 director deems appropriate.

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

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

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

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

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

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

42 § 12-05. Agency heads; powers and duties.

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

48 1. to recruit personnel;

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

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

52 4. to allocate individual managerial or executive positions to manage-
53 rial assignment levels;

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

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

1 provisions of the state civil service law and this chapter, the rules of
2 the personnel director and other applicable law.

3 (e) Before any new position in the city service shall be created, the
4 agency head shall furnish the commissioner of finance with a certificate
5 stating the title of the class of positions to which the position is to
6 be allocated. If the position is to be allocated to a new class of posi-
7 tions, the agency head shall request of the personnel director, and the
8 personnel director shall furnish to the agency head and the commissioner
9 of finance, a certificate stating the appropriate civil service title
10 for the proposed position, the range of salary of comparable civil
11 service positions and a statement of the class specifications and line
12 of promotion into which such new position will be placed and any such
13 new position shall be created only with the title approved by the
14 personnel director.

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

24 (g) The heads of city agencies or their designated representatives
25 shall fulfill the requirements for agency participation in matters
26 affecting the management of the agency in advance of collective bargain-
27 ing negotiations affecting employees.

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

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

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

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

48 § 12-06. Management service.

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

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

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

8 2. preference for appointment into management service shall be given
9 to qualified civil service employees pursuant to promotional examina-
10 tions administered in a manner consistent with the requirements of the
11 state civil service law;

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

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

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

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

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

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

26 9. management intern programs; and

27 10. training and career development programs.

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

32 § 12-07. Appointments and promotions.

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

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

42 § 12-08. Power of investigation.

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

54 § 12-09. No compensation to unauthorized employees.

55 No officer of the city whose duty is to sign or countersign warrants
56 shall draw, sign or issue, or authorize the drawing, signing or issuing

1 of any warrant on the commissioner of finance or other disbursing offi-
2 cer of the city for payment of salary to any person in its service whose
3 appointment or retention has not been in accordance with the state civil
4 service law and the valid rules in force thereunder.

5 § 12-10. Examination for licenses.

6 The personnel director shall, unless otherwise provided by law, have
7 power, upon request of any person charged with the duty of issuing
8 licenses or permits, to conduct, under rules and regulations to be
9 established by the personnel director, examinations and tests to deter-
10 mine the qualifications of persons applying for such licenses or
11 permits. The personnel director shall certify to the person having power
12 to issue the license or permit the result of any such examination or
13 test.

14 § 12-11. Officers or employees designated to serve in exempt civil
15 service positions.

16 (a) Notwithstanding any provision in this charter to the contrary, the
17 mayor or head of an agency may designate any officer or employee occupy-
18 ing a position in the competitive class of the civil service to serve in
19 a position in the exempt class, and in such case, the officer or employ-
20 ee so designated shall thereupon enter upon and exercise all the powers
21 and duties and receive the salary of such exempt position, and shall
22 retain all the rights, privileges and status of such officer or employ-
23 ee's position in the competitive class.

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

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

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

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

44 § 12-12. Residency exemption.

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

52 Chapter 13

53 Equal Employment Practices Commission

54 § 13-01. Equal employment practices commission.

55 (a) There shall be an equal employment practices commission which
56 shall review, evaluate and monitor the employment procedures, practices

1 and programs of any city agency and the department of personnel to main-
2 tain an effective affirmative employment program of equal employment
3 opportunity for minority group members and women who are employed by or
4 who seek employment with city agencies.

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

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

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

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

17 § 13-02. Duties and powers of the equal employment practices commis-
18 sion.

19 (a) The commission:

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

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

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

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

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

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

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

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

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

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

7 6. to make such policy, legislative and budgetary recommendations to
8 the mayor, council, the department of personnel or any city agency as
9 the commission deems necessary to ensure equal employment opportunity
10 for minority group members and women;

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

17 8. to establish appropriate advisory committees;

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

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

25 § 13-03. Compliance procedures.

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

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

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

1 corrective action, the commission shall notify the agency in writing of
2 this determination and the commission may thereafter publish a report
3 and recommend to the mayor whatever appropriate corrective action the
4 commission deems necessary to ensure compliance with equal employment
5 opportunity pursuant to the requirements of this chapter and chapter
6 twelve of this charter. Within thirty days of such determination the
7 agency shall submit a written response to the commission and the mayor.
8 The mayor after reviewing the commission's findings and the agency's
9 response, if any, shall order and publish such action as he or she deems
10 appropriate.

11 Chapter 14

12 Collective Bargaining

13 § 14-01. Office of collective bargaining; director.

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

18 § 14-02. Board of collective bargaining.

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

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

42 § 14-03. Bureau of certification.

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

46 § 14-04. Powers and duties.

47 The office of collective bargaining, the board of collective bargain-
48 ing and the bureau of certification shall have such powers and duties
49 with respect to labor relations and collective bargaining as shall be
50 prescribed by law and which shall be substantially equivalent to chapter
51 3 of title 12 of the New York city administrative code as it existed on
52 the date this charter was submitted pursuant to subdivision c of section
53 4 of chapter 773 of the laws of 1989 and shall also provide for a Staten
54 Island municipal labor committee.

55 § 14-05. Compensation.

1 (a) Board of collective bargaining; bureau of certification director.
2 The city members and the labor members of the board of collective
3 bargaining and their alternates shall serve without compensation. The
4 director shall be salaried for his or her services as director, chair of
5 the board of collective bargaining, and administrator of the bureau
6 certification. The director and all members of both such boards and
7 their alternates shall be entitled to receive a per diem fee and
8 reimbursement for their actual and necessary expenses incurred in the
9 performance of their duties. Fifty percent of the salary, fees, and
10 expenses provided for in this subdivision shall be paid by the members
11 of the municipal labor committee, under rules and regulations issued by
12 the board of collective bargaining, which rules may provide how such
13 costs shall be distributed among such members.

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

24 (c) Appointment of counsel and attorneys. The director may appoint a
25 counsel and attorneys, who, at the direction of the bureau of certif-
26 ication or the board of collective bargaining may appear for and repre-
27 sent the office of collective bargaining or either of the aforesaid
28 boards in any legal proceeding.

29 § 14-06. Publication of collective bargaining agreements.

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

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

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

38 § 14-07. Budgeting for agreements.

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

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

44 Chapter 15

45 Transitory Provisions

46 § 15-01. Rights of officers and employees of the city of New York
47 preserved.

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

55 (b) There shall be no layoffs of officers or employees of the city of
56 New York classified municipal civil service as a result of transfer of

1 functions or work currently being performed by employees or officers of
2 the city of New York to the city of Staten Island. The city shall guar-
3 antee the continued employment of all officers and employees of the city
4 of New York who are performing duties and functions related to any
5 municipal governmental operation affecting the city of Staten Island at
6 the time this charter takes effect.

7 § 15-02. Transfer of officers and employees in case of transfer of
8 functions.

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

24 § 15-03. Continuity of employee representation.

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

32 § 15-04. Continuity of collectively bargained benefits.

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

38 § 15-05. Future alterations of the negotiating units.

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

42 § 15-06. Establishment of new titles.

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

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

55 § 15-07. Dispute resolution.

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

6 § 15-08. Existing rights and remedies preserved.

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

9 Chapter 16

10 Labor Relations

11 § 16-01. Department; commissioner.

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

14 (b) The commissioner of labor relations is hereby authorized to repre-
15 sent the mayor in the conduct of all relations between the city and
16 labor unions, associations, or other organizations representing employ-
17 ees of the city. The commissioner of labor relations shall be responsi-
18 ble for the conduct of all relations and she or he shall establish broad
19 city wide policy governing them.

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

23 § 16-02. Powers and duties.

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

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

32 1. notice and transmittal to the commissioner of labor relations of
33 all inquiries and requests from labor unions, associations or other
34 organizations representing employees of the city soliciting interpreta-
35 tion of any agreement;

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

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

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

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

54 6. city departments and agencies shall not take disciplinary action
55 against any employee or group of employees involved in a labor relations

1 dispute without prior consultation with the commissioner of labor
2 relations;

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

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

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

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

24 § 3-001. Legislative findings and declaration of purposes.

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

31 § 3-002. Elections.

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

43 2. The Mayor elect and common council elect of the city of Staten
44 Island, upon the constitutional oath of office, are hereby authorized to
45 represent the interests of the city of Staten Island, and as govern-
46 mental officers of the city of Staten Island are authorized to enter
47 into negotiations as provided under this act and enter into such
48 purchase or employment contracts as would be authorized for such city
49 subsequent to the date of establishment. Any such contracts or agree-
50 ments from such negotiations shall be binding upon the city of Staten
51 Island.

52 3. The mayor elect, the comptroller elect and the common council elect
53 shall take the oath of office on the first of January next succeeding
54 the date on which this act shall have become a law, at which time the
55 city shall be incorporated. The mayor, city comptroller and common coun-
56 cil shall establish accounts according to the provisions of the charter

1 of the city of Staten Island and appoint such other city officers as may
2 be necessary in accordance with the provisions of the city charter.

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

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

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

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

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

10 (c) "Corporation" means the municipal corporation as created by this
11 section.

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

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

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

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

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

21 (i) "Operating expenses" means all expenses incurred by the government
22 in the administration of the municipal corporation including but not
23 limited to salaries, administrative expenses, insurance premiums, audit-
24 ing and legal expenses and fees and expenses incurred for professional
25 consultants and fiduciaries.

26 (j) "Capital reserve fund requirement" means as of any particular date
27 of computation, an amount of money equal to the amount required, for the
28 then current fiscal year of the municipal corporation, to pay interest
29 during such fiscal year on all bonds of the corporation outstanding on
30 said date of computation, the principal amount of all bonds of the
31 corporation outstanding on said date of computation which matures during
32 such fiscal year and the amount of sinking fund payments payable during
33 such fiscal year with respect to any bonds of the corporation outstand-
34 ing on said date of computation.

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

40 3. General powers as a municipal corporation. The city shall have the
41 following powers in addition to those specially conferred elsewhere in
42 this act: (a) to sue and be sued; (b) to have a seal and alter the same
43 at pleasure; (c) to make and alter by-laws for its organization and
44 internal management and, subject to agreements with noteholders or bond-
45 holders, to make rules and regulations governing the use of its property
46 and facilities; (d) to make and execute contracts, leases, subleases and
47 all other instruments or agreements necessary or convenient for the
48 exercise of its powers and functions under this section; (e) to purchase
49 real or personal property necessary and convenient for its municipal
50 purposes; to execute and deliver deeds for real property held in its own
51 name; and to sell or otherwise to dispose of such real or personal prop-
52 erty that, in the judgment of the city, is no longer necessary for its
53 municipal purposes; (f) to appoint officers, agents and employees,
54 prescribe their duties and qualifications and fix their compensation;
55 (g) to commence any action to protect or enforce any right conferred
56 upon it by any law, contract or other agreement; (h) to borrow money and

1 to issue negotiable notes or bonds or other obligations and to fund or
2 refund the same, and to provide for the rights of the holders of its
3 obligations; (i) subject to the provisions of any contract with note-
4 holders or bondholders, to invest any funds held in reserves or sinking
5 funds, or any funds not required for immediate use or disbursement, at
6 the discretion of the city, in obligations of the state or federal
7 government, obligations the principal of and interest on which are guar-
8 anteed by the state or federal government, or obligations of agencies of
9 the federal government which may, from time to time, be legally
10 purchased by savings banks of the state as investments of funds belong-
11 ing to them or in their control and which have been approved by the
12 state comptroller or in secured time deposits or other interest bearing
13 accounts secured by such obligations; (j) subject to the provisions of
14 any contract with noteholders or bondholders, to purchase notes or bonds
15 of the city; (k) to procure insurance against any loss in such amounts
16 and from such insurers as it deems desirable; (l) to engage the services
17 of consultants on a contract basis for rendering professional and tech-
18 nical assistance and advice; (m) to contract for and to accept any gifts
19 or grants or loans of funds or property or financial or other aid in any
20 form from the federal government or any agency or instrumentality there-
21 of, or from any other source and to comply with the terms and conditions
22 thereof; (n) as security for the payment of the principal of and inter-
23 est on any bonds so issued and any agreements made in connection there-
24 with, to pledge all or any part of its revenues; (o) to enact such local
25 laws to take effect on the date of establishment as shall be necessary
26 to provide for effective transition of government; and (p) to do any and
27 all things necessary or convenient to carry out its purposes and exer-
28 cise the powers expressly given and granted in this act.

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

33 § 3-004. Employees of the city of Staten Island.

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

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

1 3. Transfer rights. Notwithstanding any other provision of law, there
2 shall be no layoffs of officers or employees of the preceding municipi-
3 pality, its agencies, authorities, boards, corporations or other related
4 entities as a result of the transfer of functions or work currently
5 performed by these officers and employees to the city of Staten Island.
6 All such employees who have been assigned to work on Staten Island or
7 who have been substantially engaged in the performance of a function to
8 be transferred to the city of Staten Island shall be transferred to
9 positions in employment by the city of Staten Island upon the establish-
10 ment of the city of Staten Island and shall retain all rights, privi-
11 leges, benefits and salaries to which any such employee was previously
12 entitled as an employee of the preceding municipality. Notice that an
13 employee is subject to transfer shall be given to an employee no less
14 than twenty days prior to the effective date of transfer. Any employee
15 so notified may opt to remain in his or her employment by the preceding
16 municipality rather than be transferred by so informing his or her
17 employer ten days prior to the transfer date. Such employee shall be
18 retained in employment by the preceding municipality and retain all
19 rights, privileges, benefits and salaries to which the employee was
20 entitled prior to the establishment of the city of Staten Island.

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

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

1 6. Residency exemption. Any employee of the preceding municipality
2 appointed, reassigned or transferred to city of Staten Island employment
3 without a break in service shall be exempt from any residency require-
4 ment in connection with his or her employment or subsequent promotion,
5 demotion, reassignment, transfer or other personnel change. For the
6 purpose of this section, a break in service shall be defined as a period
7 of more than one year. Notwithstanding any other provision of law, any
8 Staten Island resident employed by the preceding municipality or on
9 leave of absence from such employment on the date of the establishment
10 of the city of Staten Island shall be exempt from any residency require-
11 ment in connection with his or her preceding municipality employment or
12 subsequent preceding municipality promotion, demotion, reassignment,
13 transfer or other personnel change.

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

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

43 (b) The comptroller of the preceding municipality shall certify to the
44 comptroller of the city of Staten Island and the state comptroller or
45 other chief officer of a state pension system the amount of money
46 required to be paid by the city of Staten Island for pension costs
47 resulting from elections made pursuant to paragraph (a) of this subdivi-
48 sion and the comptroller of the city of Staten Island shall pay to the
49 retirement system of the preceding municipality upon approval by the
50 state comptroller or other chief officer of a state pension system, the
51 amounts so certified by the comptroller of the preceding municipality.
52 The comptroller of the preceding municipality shall also certify to the
53 comptroller of the city of Staten Island and the state comptroller or
54 other chief officer of a state pension system the amount of money
55 required to be contributed by such employees. The comptroller of the
56 city of Staten Island shall be authorized to provide for the withholding

1 or withhold the contribution of such employees and the payment of that
2 amount to the retirement system of the preceding municipality. The
3 amount so certified pursuant to this paragraph shall be the same as the
4 amounts required to be contributed for similarly situated city employees
5 by the preceding municipality and by employees of the preceding munici-
6 pality.

7 8. Health insurance coverage. Health insurance coverage for city of
8 Staten Island employees, persons retired from city of Staten Island
9 employment and dependents of such employees and retirees shall be
10 provided in accordance with the personnel and labor, health insurance
11 coverage for municipal employees, persons retired from municipal employ-
12 ment and dependents of such employees and retirees provisions of the
13 administrative code of the preceding municipality unless the duly recog-
14 nized public employee representative negotiates altered terms.

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

20 § 3-005. Assistance to the city of Staten Island.

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

24 § 3-006. Provision of municipal services in the city of Staten Island.

25 During the transition period the mayor and comptroller of the city of
26 Staten Island and the mayor and comptroller of the preceding munici-
27 pality are authorized to enter into agreements as to the provision of
28 municipal services by the preceding municipality to the city of Staten
29 Island to be provided on or after the date of establishment of the city
30 of Staten Island and the terms and conditions thereof.

31 § 3-007. Debt, property, obligations and other allocations.

32 1. (a) Proportion of debt to be assumed by the city of Staten Island.
33 The proportion of the debt of the preceding municipality which shall be
34 assumed by the city of Staten Island, as constituted by this act, shall
35 be determined in the following manner: The mayor and the comptroller of
36 the city of Staten Island, as representing the city of Staten Island and
37 the mayor and the comptroller of the preceding municipality, are hereby
38 authorized and empowered to agree if they can, as to the amount of the
39 debt of the preceding municipality, which should equitably and properly
40 be assumed by the city of Staten Island. If the mayor and the comp-
41 troller of the city of Staten Island and the mayor and the comptroller
42 of the preceding municipality shall be unable to agree within six months
43 after this section takes effect as to the proportion of said debt of the
44 preceding municipality to be assumed by the city of Staten Island, the
45 supreme court of the third judicial district shall have power to deter-
46 mine the proportion of said debt of the preceding municipality to be
47 assumed by the city of Staten Island, and to enforce such award, deci-
48 sion and determination as shall be made in an action to be brought by
49 and in the name of either of said parties not less than six months nor
50 more than one year after this section takes effect. Nothing herein
51 contained shall impair the obligation of any contract; and the property
52 and inhabitants of such part of the preceding municipality as is by this
53 act included within the city of Staten Island, shall continue liable to
54 the existing creditors of the said preceding municipality, in like
55 manner, as if this act had not been passed. But from and after the
56 taking effect of this section, the preceding municipality shall have no

1 power to issue any bond, obligation or other evidence of indebtedness
2 which shall bind or render liable the property or inhabitants of any
3 part of said municipality included within the city of Staten Island as
4 hereby constituted. The apportionment of the debt of the preceding muni-
5 cipality shall be determined according to the relative assessed valu-
6 ation of the real property included in, or remaining without the city of
7 Staten Island.

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

37 (c) Disposition of real and personal property owned by or held in
38 trust for the preceding municipality. All the real property owned by the
39 preceding municipality and situated in that part of said municipality
40 included within the city of Staten Island, as constituted by this act,
41 is hereby vested in the said city of Staten Island and divested out of
42 the preceding municipality, and all of the real property owned by the
43 preceding municipality and situated elsewhere in said municipality is
44 hereby vested in the preceding municipality and divested out of the said
45 city of Staten Island. All of the property owned by the preceding muni-
46 cipality other than real property, including money, investments, securi-
47 ties on investments and money held in trust for the benefit of said
48 municipality, directly or indirectly, shall be divided between the
49 preceding municipality and the city of Staten Island, as constituted by
50 this act, and the proportion of the same to which each shall, in equity
51 and good conscience, be entitled to receive upon such division, shall be
52 ascertained and determined by agreement by and between the mayor and
53 comptroller of the preceding municipality, upon the one side, and the
54 mayor and the comptroller of the said city of Staten Island, upon the
55 other side, and in the case of their inability to agree upon such divi-
56 sion within six months after this section shall take effect, the supreme

1 court in the third judicial district is hereby empowered to divide the
2 same between them and to ascertain and award to each its equitable
3 proportion thereof, and to enforce its determination thereon, and either
4 of the said municipalities may institute and prosecute, in its own name,
5 an action in said court for that purpose after the expiration of six
6 months and before the expiration of one year after this section takes
7 effect.

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

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

53 (b) Disposition of real and personal property owned by or held in
54 trust for the city school district of the preceding municipality. All
55 the real property owned by the city school district of the preceding
56 municipality and situated in that part of the city school district of

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

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

40 § 3-008. Continuance of municipal services.

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

48 § 3-009. Powers of the city of Staten Island to adopt and amend local
49 laws.

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

1 § 3-010. Powers of the city of Staten Island relating to home rule
2 powers.

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

8 § 4-001. City school district of the city of Staten Island.

9 1. The territory of the city of Staten Island in the county of Rich-
10 mond, on the date when this act shall take effect, shall be and is here-
11 by constituted a city school district, and shall be known as the city
12 school district of the city of Staten Island and shall have and enjoy
13 all the powers and duties of a city school district under the provisions
14 of the education law.

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

18 § 4-002. Section 2550 of the education law, as amended by chapter 65
19 of the laws of 1972, is amended to read as follows:

20 § 2550. Application of article. This article shall apply to the city
21 school districts of the following cities only: New York, Buffalo,
22 Rochester, Syracuse, Staten Island and Yonkers.

23 § 4-003. Section 2552 of the education law is amended by adding a new
24 subdivision e to read as follows:

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

26 § 4-004. Subdivisions 1, 2, 4, 5 and 6 of section 2553 of the educa-
27 tion law, subdivision 1 as separately amended by chapters 211 and 441 of
28 the laws of 1980, subdivisions 2, 4 and 5 as added by chapter 242 of the
29 laws of 1974 and subdivision 6 as amended by chapter 211 of the laws of
30 1980, are amended to read as follows:

31 1. No person shall be eligible to the office of member of a board of
32 education who is not a citizen of the United States, who is not quali-
33 fied to register for or vote at an election in accordance with the
34 provisions of section 5-106 of the election law, and who, in the case of
35 the city school district of the city of Yonkers, has not been a resident
36 of the city school district for which [~~he~~] such person is chosen for a
37 period of at least three years immediately preceding the date of [~~his~~]
38 such person's election or appointment and who, in the case of the city
39 school district of the city of Buffalo, in the case of a member to be
40 elected at large is not a qualified voter of such city school district
41 and who has not been a resident of such district for a period of at
42 least three years immediately preceding the date of [~~his~~] such person's
43 election and in the case of a member elected from a city school subdis-
44 trict is not a qualified voter of such city school subdistrict and has
45 not been a resident of the city school district for three years and a
46 resident of the city school subdistrict which [~~he~~] such person repres-
47 ents or seeks to represent for a period of one year immediately preced-
48 ing the date of [~~his~~] such person's election, and who, in the case of
49 the city school district of the city of Rochester, is not a qualified
50 voter under section 5-102 of the election law of such city school
51 district; and who, in the case of the city school district of the city
52 of Staten Island has been a qualified voter under section 5-102 of the
53 election law of such city school district for at least ninety days imme-
54 diately preceding the date of such person's election or appointment; and
55 who in the case of the city school district of the city of Syracuse has
56 not been a qualified voter under section 5-102 of the election law of

1 such city school district for at least ninety days immediately preceding
2 the date of [~~his~~] such person's election or appointment.

3 2. In the city school districts of the cities of Rochester and Syra-
4 cuse the members of such board of education shall be chosen by the
5 voters at large at either a general or municipal election, or at both.
6 In the city school district of the city of Staten Island the members of
7 such board of education shall be chosen pursuant to the provisions of
8 subdivision twelve of this section. In the city school district of the
9 city of Buffalo the members of such board of education shall be chosen
10 pursuant to the provisions of subdivision ten of this section.

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

13 a. Rochester: Four Years;

14 b. Syracuse: Four Years;

15 c. Yonkers: Five Years; and

16 d. Staten Island: Three Years.

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

22 6. If a vacancy occurs other than by expiration of term in the office
23 of a member of a board of education in a district in which such members
24 are elected at a general or municipal election, such vacancy shall be
25 filled by appointment by the mayor until the next general or municipal
26 election is held, and such vacancy shall then be filled at such election
27 for the unexpired portion of such term, except that in the city school
28 district of the city of Rochester any such vacancy shall be filled
29 pursuant to the provisions of subdivision nine of this section and
30 except further that any such vacancy on the board of education of the
31 city school district of the city of Buffalo shall be filled pursuant to
32 the provisions of subdivision ten of this section and except that any
33 vacancy on the board of education of the city school district of the
34 city of Staten Island shall be filled pursuant to the provisions of
35 subdivision twelve of this section.

36 § 4-005. Section 2553 of the education law is amended by adding a new
37 subdivision 12 to read as follows:

38 12. a. The members of the board of education of the city school
39 district of the city of Staten Island shall be elected by the qualified
40 voters of such city as provided in this subdivision.

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

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

49 (2) Each candidate for member of the board of education of the city
50 school district of the city of Staten Island shall be required to file
51 petitions containing at least five hundred signatures. No petition shall
52 contain any political party or independent body name or label. Each
53 petition shall contain the name of only one candidate and such petition
54 shall be filed with the clerk of the board of elections of the county of
55 Richmond not earlier than the fifth Tuesday and not later than the
56 fourth Tuesday preceding the date on which an election shall be held. A

1 certificate of acceptance or declination of any individual so nominated
2 shall be filed not later than the third day after the fourth Tuesday
3 preceding the election.

4 d. No person shall be eligible for the office of member of such board
5 of education who is not a qualified voter under section 5-102 of the
6 election law of such city school district. No person shall hold at the
7 same time the office of member of the board of education and any other
8 elective office nor shall any holder of an elective office be a candi-
9 date for the office of member of such board of education. No employee of
10 the city school district of the city of Staten Island shall be a member
11 of the board of education.

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

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

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

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

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

54 I, the undersigned, do hereby state that I am a duly qualified voter
55 of the city of Staten Island, that my present place of residence is
56 truly stated opposite my signature hereto, I intend to support at the

ensuing election and I do hereby nominate the following named person as a candidate for nomination (for the public office of member of the board of education of the city school district of the city of Staten Island at large.....day of.....,) (for the city school district.....day of.....)

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

<u>Date</u>	<u>Name of Signer</u>	<u>Present Residence</u>	<u>Assembly District</u>	<u>Election District</u>
.....
.....
.....

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

STATEMENT OF WITNESS

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

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

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

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

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

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

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

5 n. If a candidate, after a petition in such candidate's behalf shall
6 have been duly filed with the clerk of the board of elections, and prior
7 to the date of the election, shall decline to accept the nomination,
8 die, remove from the school district, accept or be a candidate for
9 another elective office, or become otherwise disqualified for such city
10 school district office, a further petition may be filed with such clerk,
11 nominating another candidate in such candidate's place and stead. Such
12 further petition shall in all respects comply with the provisions of
13 paragraphs f, g and i of this subdivision, except that it may be filed
14 at any time up to and including the fifteenth day preceding the date of
15 the election pursuant to the provisions of this subdivision and the time
16 within which to accept or object to such further petition shall be
17 computed from the date of filing or said fifteenth day, whichever is
18 earlier.

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

27 p. The members so elected to the board of education shall convene on
28 the first business day in July of each year at the time of the commence-
29 ment of their term of office and select from their members a president
30 who shall serve for a term of one year or such other term, not exceeding
31 the term of such member's office, as may be fixed by the rules and regu-
32 lations of the board.

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

39 r. Polls shall be open for voting for the hours prescribed by section
40 8-100 of the election law for primary elections. The results of such
41 elections, after canvassing, shall be certified and reported by the
42 board of elections to the city clerk and the board of education of such
43 city.

44 § 4-006. Subdivision 2 of section 2554 of the education law, as
45 amended by chapter 27 of the laws of 2012, is amended to read as
46 follows:

47 2. [~~F~~] Except as provided in subdivision one of section two thousand
48 five hundred seventy-three of this article, to create, abolish, maintain
49 and consolidate such positions, divisions, boards or bureaus as, in its
50 judgment, may be necessary for the proper and efficient administration
51 of its work; to appoint a superintendent of schools, such associate,
52 assistant, district and other superintendents, examiners, directors,
53 supervisors, principals, teachers, lecturers, special instructors,
54 medical inspectors, nurses, auditors, attendance officers, secretaries,
55 clerks, custodians, janitors and other employees and other persons or
56 experts in educational, social or recreational work or in the business

1 management or direction of its affairs as said board shall determine
2 necessary for the efficient management of the schools and other educa-
3 tional, social, recreational and business activities; provided, however,
4 that in the city school districts of the cities of Buffalo, Rochester,
5 and Syracuse appointment of associate, assistant and district super-
6 intendants, and other supervising staff who are excluded from the right
7 to bargain collectively pursuant to article fourteen of the civil
8 service law shall, within the amounts budgeted for such positions, be by
9 the superintendent of such city school district; and to determine their
10 duties except as otherwise provided herein.

11 § 4-007. Subdivision 8 of section 2554 of the education law, as
12 amended by chapter 576 of the laws of 1964, is amended to read as
13 follows:

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

39 § 4-008. Subdivision 14 of section 2554 of the education law, such
40 section as renumbered by chapter 762 of the laws of 1950, is amended to
41 read as follows:

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

1 shall at all times be open to inspection by members of such board of
2 education, by members of the local school boards and by the superinten-
3 dent of schools, or by any associate superintendent of schools, or by
4 the assistant superintendents.

5 § 4-009. Subdivision 15 of section 2554 of the education law is
6 amended by adding a new paragraph b-1 to read as follows:

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

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

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

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

41 § 4-011. Subdivision 5 of section 2556 of the education law, as
42 amended by chapter 480 of the laws of 2014, is amended to read as
43 follows:

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

1 § 4-012. Section 2556 of the education law is amended by adding a new
2 subdivision 6-a to read as follows:

3 6-a. After a site has been selected and plans and specifications for a
4 building thereon have been approved as provided herein, the board of
5 education of the city school district of the city of Staten Island may,
6 in its discretion, by regulation deliver such plans and specifications
7 to the common council or other local legislative body which may thereup-
8 on, in its discretion, award a contract for the erection of such build-
9 ing in the same manner and in accordance with the provisions of law
10 regulating the awarding of contracts for the construction of municipal
11 buildings of such city.

12 § 4-013. Section 2556 of the education law is amended by adding three
13 new subdivisions 10-b, 11-a and 13-a to read as follows:

14 10-b. In the city of Staten Island if the several parts of the work or
15 labor to be done and/or the supplies, materials and equipment to be
16 furnished shall together involve an expenditure of not more than ten
17 thousand dollars, the same may be procured in compliance with the proce-
18 dures on contracting provided in chapter nine of the charter of the city
19 of Staten Island.

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

33 13-a. The board of education of the city school district of the city
34 of Staten Island may through its duly designated officers, agents or
35 employees enter upon public or private property for the purpose of
36 making surveys, soundings or test borings necessary for the exercise of
37 the powers or the performance of the duties, of such board of education,
38 provided, however, that the mayor had formally approved the acquisition
39 of the real property as a school site.

40 § 4-014. The education law is amended by adding three new sections
41 2560-a, 2561-a, and 2562-a to read as follows:

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

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

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

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

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

55 § 4-015. Section 2566 of the education law is amended by adding a new
56 subdivision 3-a to read as follows:

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

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

§ 2567-a. Protection of rights exercised under licenses issued by a board of education in the city of Staten Island. No person shall forfeit any right given to such person under a license issued by such board of education, pursuant to this chapter, because of absence while in service in the armed forces of the United States or in the service of the American Red Cross. Any person may at any time within six months after such person's discharge from service in the armed forces of the United States or the American Red Cross make application to the license issuing authority by affidavit setting forth that such person has been in service in the armed forces of the United States or the American Red Cross and has been discharged from such service and that such person desires the license theretofore issued to them to be reissued as of the date of such application, and it shall be the duty of the licensing authority to reinstate such license as of the date on which application is made.

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

§ 4-017. Subdivision 1 of section 2573 of the education law, as amended by section 3 of subpart D of part EE of chapter 56 of the laws of 2015, subparagraphs i and ii of paragraph (a) as amended by chapter 143 of the laws of 2024 and subparagraph ii of paragraph (b) as amended by chapter 345 of the laws of 2019, is amended to read as follows:

1. (a) i. ~~Teachers~~ Except as already provided for in paragraph (c) of this subdivision, teachers and all other members of the teaching staff, appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years or as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the probationary period shall be limited to one year; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was

1 not dismissed from such district or board as a result of charges brought
2 pursuant to subdivision one of section three thousand twenty-a of this
3 chapter, the probationary period shall not exceed two years; provided,
4 however, that in cities with a population of one million or more, a
5 teacher appointed under a newly created license, for teachers of reading
6 and of the emotionally handicapped, to a position which the teacher has
7 held for at least two years prior to such appointment while serving on
8 tenure in another license area who was not dismissed as a result of
9 charges brought pursuant to subdivision one of section three thousand
10 twenty-a of this chapter, the probationary period shall be one year. The
11 service of a person appointed to any of such positions may be discontin-
12 ued at any time during such probationary period, on the recommendation
13 of the superintendent of schools, by a majority vote of the board of
14 education. Each person who is not to be recommended for appointment on
15 tenure shall be so notified by the superintendent of schools in writing
16 not later than sixty days immediately preceding the expiration of such
17 person's probationary period. In city school districts having a popu-
18 lation of four hundred thousand or more, persons with licenses obtained
19 as a result of examinations announced subsequent to the twenty-second
20 day of May, nineteen hundred sixty-nine appointed upon conditions that
21 all announced requirements for the position be fulfilled within a speci-
22 fied period of time, shall not acquire tenure unless and until such
23 requirements have been completed within the time specified for the
24 fulfillment of such requirements, notwithstanding the expiration of any
25 probationary period. In all other city school districts subject to the
26 provisions of this article, failure to maintain certification as
27 required by this article and by the regulations of the commissioner
28 shall be cause for removal within the meaning of subdivision five of
29 this section.

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

1 section three thousand twenty-a of this chapter, the teacher shall be
2 appointed for a probationary period of two years. The service of a
3 person appointed to any of such positions may be discontinued at any
4 time during such probationary period, on the recommendation of the
5 superintendent of schools, by a majority vote of the board of education.
6 Each person who is not to be recommended for appointment on tenure shall
7 be so notified by the superintendent of schools in writing not later
8 than sixty days immediately preceding the expiration of such person's
9 probationary period. In all city school districts subject to the
10 provisions of this article, failure to maintain certification as
11 required by this article and by the regulations of the commissioner
12 shall be cause for removal within the meaning of subdivision five of
13 this section.

14 (b) i. ~~Administrators~~ Except as otherwise provided for in paragraph
15 (c) of this subdivision, administrators, directors, supervisors, princi-
16 pals and all other members of the supervising staff, except executive
17 directors, associate, assistant, district and community superintendents
18 and examiners, appointed prior to July first, two thousand fifteen and
19 authorized by section twenty-five hundred fifty-four of this article,
20 shall be appointed by the board of education, upon the recommendation of
21 the superintendent or chancellor of schools, for a probationary period
22 of three years. The service of a person appointed to any of such posi-
23 tions may be discontinued at any time during the probationary period on
24 the recommendation of the superintendent of schools, by a majority vote
25 of the board of education.

26 ii. ~~Administrators~~ Except as otherwise provided for in paragraph (c)
27 of this subdivision, administrators, directors, supervisors, principals
28 and all other members of the supervising staff, except executive direc-
29 tors, associate, assistant, district and community superintendents and
30 examiners, appointed on or after July first, two thousand fifteen and
31 authorized by section twenty-five hundred fifty-four of this article,
32 shall be appointed by the board of education, upon the recommendation of
33 the superintendent or chancellor of schools, for a probationary period
34 of four years provided that such probationary period may be extended in
35 accordance with paragraph (b) of subdivision five of this section;
36 provided, however, that in the case of a principal, administrator,
37 supervisor, or other member of the supervising staff who has been
38 appointed on tenure pursuant to this chapter as an administrator within
39 an authorized administrative tenure area in another school district
40 within the state, the school district where currently employed, or a
41 board of cooperative educational services, and who was not dismissed
42 from such district or board as a result of charges brought pursuant to
43 subdivision one of section three thousand twenty-a or section three
44 thousand twenty-b of this chapter, the principal, administrator, super-
45 visor or other member of the supervising staff shall be appointed for a
46 probationary period of three years. The service of a person appointed to
47 any of such positions may be discontinued at any time during the proba-
48 tionary period on the recommendation of the superintendent of schools,
49 by a majority vote of the board of education.

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

1 accordance with the provisions of paragraphs (a) and (b) of this subdivi-
2 vision.

3 § 4-018. Section 2576 of the education law is amended by adding a new
4 subdivision 4-a to read as follows:

5 4-a. In the city of Staten Island such estimate shall be filed with
6 the officer authorized to receive other department estimates and the
7 same acted on by such officer and by the common council of such city in
8 the same manner and with the same effect as other department estimates.
9 The common council is also authorized, in its discretion, to include in
10 such budget a sum for any of the purposes enumerated in paragraph c of
11 subdivision one of this section, and any further amount for such
12 purposes as may be authorized by a tax election held in such city pursu-
13 ant to the provisions of this chapter. After the adoption of such budget
14 the common council shall cause the amount thereof to be included in the
15 tax and assessment roll of the city and the same shall be collected in
16 the same manner and at the same time as other taxes of the city are
17 collected, and placed to the credit of the board of education of the
18 city school district of such city.

19 § 4-019. Section 2579 of the education law is amended by adding a new
20 subdivision 4 to read as follows:

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

30 § 4-020. Additional transitory provisions relating to the city school
31 district of the city of Staten Island. 1. The board of education of the
32 city school district of the city of Staten Island shall possess those
33 powers and duties as are authorized for a city school district pursuant
34 to article 52 of the education law, as amended by this act. In further-
35 ance of such powers and duties the board shall confer with the mayor,
36 the comptroller and the common council of the city of Staten Island and
37 the board of education of the preceding municipality for the purpose of
38 preparing for submission and implementation of a budget for the school
39 year commencing on the first of July in the second year next succeeding
40 the date on which this act shall have become a law and to take such
41 other actions as may be necessary and appropriate to provide for the
42 operation of the city school district of the city of Staten Island on
43 and after the date of establishment of the city of Staten Island.

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

49 3. All employees of the board of education of the city school district
50 of the preceding municipality and such other employees of any other
51 public entity as may be transferred pursuant to the provisions of this
52 act shall retain all rights, privileges, benefits and salaries to which
53 the employee was previously entitled as an employee of the board of
54 education of the preceding municipality. Transfers of employment to the
55 city school district of the city of Staten Island shall be conducted in
56 the same manner as is provided by for the city of Staten Island as

1 provided in this act. Such employees shall not suffer a loss of employ-
2 ment by reason of such transfer within a period of three years from the
3 effective date of such transfer nor shall any such employees be subject
4 to any additional employment probationary period by reason of such
5 transfer.

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

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

13 § 5-001. Transfer of the college of Staten Island. 1. The legislature
14 finds that due to the establishment of the city of Staten Island, the
15 transfer of the college of Staten Island from the city university of New
16 York to the state university of New York is a public purpose. Such
17 transfer shall not affect the title to the real property of the college
18 of Staten Island which shall continue to be held by the state of New
19 York, except that notwithstanding the provisions of paragraph b of
20 subdivision 1 of section 6219 of the education law if such real property
21 ceases to be used for college purposes, title to such property shall
22 revert to the city of Staten Island as successor in interest to the
23 prior municipal government of the geographical area of Staten Island.
24 The college of Staten Island is hereby transferred to the state univer-
25 sity of New York. Such transfers shall include all furnishings, equip-
26 ment, records and all other property normally allocated to the college
27 of Staten Island by the city university of New York.

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

39 3. (a) Whenever the term "city university of New York" is referred to
40 or designated in any law, general, special or local, contract, lease,
41 judgment, decision or document pertaining to the functions, powers and
42 duties relating to the college of Staten Island hereby continued in,
43 transferred and assigned to, or devolved upon, the state university of
44 New York, such reference or designation shall be deemed to refer to and
45 include the state university of New York, so far as such law, contract,
46 lease, judgment, decision or document pertains to matters which are
47 within its jurisdiction by reason of the redesignation, continuation,
48 transfer, assignment and devolution of functions, powers and duties made
49 by this act.

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

1 into by the state university of New York prior to the effective date of
2 this section shall remain in full force and effect and shall be
3 conducted and completed by the state university of New York.

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

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

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

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

26 4. A council for the college of Staten Island is hereby established
27 pursuant to section 356 of the education law. It shall consist of ten
28 members, nine of whom shall be appointed by the governor and one of whom
29 shall be elected by and from among the students of the institution. Such
30 voting members shall be subject to every provision of any general,
31 special or local law, ordinance, charter, code, rule or regulation
32 applying to the voting members of such board with respect to the
33 discharge of their duties including, but not limited to those provisions
34 setting forth codes of ethics, disclosure requirements and prohibiting
35 business and professional activities. The election of the student member
36 shall be conducted in accordance with rules and regulations promulgated
37 by the respective representative campus student association in accord-
38 ance with guidelines established by the state university trustees. One
39 member shall be designated by the governor as chairman. Vacancies shall
40 be filled for the unexpired term in the same manner as original
41 selections. The term of office for each council member shall be seven
42 years. The term of office for the student member shall be one year. In
43 the event the student member ceases to be a student at the institution
44 such member shall be required to resign. Members appointed by the gover-
45 nor may be removed by the governor. Members elected by the students of
46 the institution may be removed by such students in accordance with rules
47 and regulations promulgated by the respective representative campus
48 student association in accordance with guidelines promulgated by the
49 state university trustees. Members of such council shall receive no
50 compensation for their services but shall be reimbursed for the expenses
51 actually and necessarily incurred by them in the performance of their
52 duties hereunder.

53 5. All employees of the college of Staten Island of the city universi-
54 ty of New York shall be transferred to employment in the state universi-
55 ty of New York and shall retain all rights, privileges, benefits and

1 salaries to which the employee was previously entitled as an employee of
2 the city university of New York.

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

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

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

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

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

39 If a dispute arises, the office of collective bargaining shall deter-
40 mine which public employee organization is appropriate to represent
41 transferees, other hires, or employees in a new title on the basis of
42 the title's community of interest with titles in the state university of
43 New York and the city university of the city of New York.

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

46 6. On and after the first of July in the second year next succeeding
47 the date on which this act shall have become a law, officers and employ-
48 ees who become employees of the state pursuant to this act shall become
49 members of the New York state employees' retirement system to the extent
50 permitted or required by the provisions of the retirement and social
51 security law, except that any employee who is a member of the New York
52 city employees' retirement system may elect to continue membership in
53 the New York city employees' retirement system. Any election pursuant to
54 this section shall be made no later than the one hundred twentieth day
55 after the effective date of this section, by filing a written notice
56 thereof with the administrative head of the New York state employees'

1 retirement system and the New York city employees' retirement system
2 and, once made and filed, shall be irrevocable. Upon the retirement of
3 an employee who has made such an election, the calculation of final
4 average salary by the New York city employees' retirement system shall
5 be performed as if the salary earned as a state employee on and after
6 such effective date were earned in New York city employment. In the case
7 of an employee who becomes a member of the New York state employees'
8 retirement system pursuant to this section, the New York city employees'
9 retirement system shall make a transfer of reserves, contributions and
10 credits to the New York state employees' retirement system, in the
11 manner required by section 43 of the retirement and social security law.

12 The comptroller of the city of New York shall certify to the state
13 administrator the amount of money required to be paid by the state of
14 New York for pension costs resulting from elections made pursuant to
15 this section. The comptroller of the state of New York shall pay to the
16 New York city employees' retirement system, upon approval by the state
17 administrator, the amounts so certified by the comptroller of the city
18 of New York. The comptroller of the city of New York shall also certify
19 to the state administrator the amount of money required to be contrib-
20 uted by each of such employees. The comptroller of the state of New
21 York shall be authorized to withhold the contributions of such employees
22 and pay that amount to the New York city employees' retirement system.
23 The amount so certified shall be the same as the amounts required to be
24 contributed for similarly situated city employees by the city of New
25 York and by employees of the city of New York.

26 § 5-002. Subdivision 3 of section 352 of the education law, as amended
27 by chapter 13 of the laws of 2021, is amended to read as follows:

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

42 § 5-003. Paragraphs (f) and (g) of subdivision 2 and paragraph (d) of
43 subdivision 3 of section 6204 of the education law, paragraph (f) of
44 subdivision 2 as amended by chapter 306 and paragraph (g) of subdivision
45 2 as added by chapter 305 of the laws of 1979, and paragraph (d) of
46 subdivision 3 as amended by chapter 98 of the laws of 2010, are amended
47 to read as follows:

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

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

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

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

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

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

16 § 6-001. The judiciary law is amended by adding a new article 5-C to
17 read as follows:

18 ARTICLE 5-C

19 INTERIM COURT STRUCTURE FOR THE CITY OF STATEN ISLAND

20 Section 178. Declaration of legislative findings and intent.

21 178-a. Continuation of court proceedings.

22 178-b. Judicial transition.

23 178-c. Judiciary jurisdiction.

24 178-d. Judiciary; family court.

25 178-e. Judiciary; criminal court.

26 178-f. Judiciary; civil court.

27 178-g. Judicial transition; structure.

28 178-h. Unified court system; services.

29 178-i. Judicial transition services.

30 178-j. Effect of existing collective bargaining agreements.

31 § 178. Declaration of legislative findings and intent. The interim
32 court structure established for the city of Staten Island by this arti-
33 cle is being enacted in the exercise of the legislature's constitutional
34 authority to provide for the creation and organization of units of local
35 government. The legislature finds that it is not possible to create,
36 fund and staff a new and jurisdictionally distinct court structure for
37 the city of Staten Island which would be fully operational on the effec-
38 tive date of such city's incorporation. The legislature also finds that
39 the creation of a jurisdictionally distinct court structure for the city
40 of Staten Island would likely disrupt the orderly administration of
41 justice in such city and the county of Richmond, unnecessarily inconven-
42 ience and confuse litigants, and increase significantly the cost of
43 conducting litigation within such city and county. The purpose of this
44 article is to prevent an interregnum in the operations of the unified
45 court system in connection with the incorporation of the city of Staten
46 Island and its organization as a functional unit of local government. By
47 establishing an interim court structure for such city, the legislature
48 intends to relieve taxpayers and litigants of the expense, inconven-
49 ience, confusion, and delay that would be occasioned by the creation of
50 a new court structure for such city. By preserving the existing trial
51 court structure in the county of Richmond during the period of govern-
52 mental reorganization following the incorporation of the city of Staten
53 Island, the legislature intends that all inhabitants of such county and
54 city will continue to possess the same rights and access to the unified
55 court system that they possessed immediately prior to the incorporation
56 of such city.

1 § 178-a. Continuation of court proceedings. The incorporation of the
2 city of Staten Island shall not alter the jurisdiction of any court
3 existing in the county of Richmond immediately prior to the effective
4 date of such city's incorporation. All courts in such county are contin-
5 ued, and no civil or criminal appeal, action or proceeding pending
6 before any court or any judge or justice on the effective date of incor-
7 poration shall abate or be impaired; and every such appeal, action or
8 proceeding shall be continued in the court in which such appeal, action
9 or proceeding was pending immediately prior to such effective date.

10 § 178-b. Judicial transition. There is established a judicial transi-
11 tion period for the city of Staten Island. Such period shall commence
12 on the effective date of such city's incorporation and terminate on
13 December thirty-first in the fifth year following such incorporation or
14 until the provisions of this article are specifically superseded by
15 state law.

16 § 178-c. Judiciary jurisdiction. During the judicial transition peri-
17 od:

18 (1) the county of Richmond shall be deemed to be a county within the
19 city of New York for all purposes of article six of the state constitu-
20 tion;

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

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

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

31 § 178-d. Judiciary; family court. Notwithstanding section one hundred
32 twenty-one of the family court act, the county of Richmond shall be
33 deemed to be a county within the city of New York during the judicial
34 transition period, and there shall be no fewer than three judges of such
35 court who shall be residents of the county of Richmond. A vacancy occur-
36 ring in the office of any such judge during the judicial transition
37 period shall be filled by the mayor of the city of New York upon the
38 recommendation of the mayor of the city of Staten Island consistent with
39 the provisions of section two hundred sixteen-a of the family court act.

40 § 178-e. Judiciary; criminal court. Notwithstanding the provisions of
41 sections twenty and twenty-two of the New York city criminal court act,
42 the city of Staten Island shall be deemed to be part of the city of New
43 York during the judicial transition period, and there shall be no fewer
44 than three judges of such court who shall be residents of the city of
45 Staten Island. A vacancy occurring in the office of such judge during
46 the judicial transition period shall be filled by the mayor of the city
47 of New York upon the recommendation of the mayor of the city of Staten
48 Island consistent with the provisions of section twenty-two of the New
49 York city criminal court act.

50 § 178-f. Judiciary; civil court. Notwithstanding the provisions of
51 section one hundred two-a of the New York city civil court act, the city
52 of Staten Island shall be deemed to be part of the city of New York
53 during the judicial transition period, and there shall be no fewer than
54 three judges of such court who shall be residents of the city of Staten
55 Island. A vacancy occurring in the office of such judge otherwise than
56 by expiration of term during the judicial transition period shall be

1 filled by the mayor of the city of New York upon the recommendation of
2 the mayor of the city of Staten Island consistent with the provisions of
3 section one hundred two-a of the New York city civil court act.

4 § 178-g. Judicial transition; structure. The mayor and the common
5 council of the city of Staten Island, in consultation with the chief
6 administrator of the courts, shall develop a plan for an appropriate
7 court structure for the city of Staten Island following the judicial
8 transition period. Such plan shall include recommendations for the
9 jurisdiction of each court, the number of judges needed, a personnel
10 structure for nonjudicial officers and employees, necessary physical
11 facilities, and a fiscal analysis of each component of the plan. Such
12 plan shall be submitted to the governor, the legislature and to the
13 chief judge of the state, no later than three years following commence-
14 ment of the judicial transition period.

15 § 178-h. Unified court system; services. The chief administrator of
16 the courts is authorized to do all things necessary to continue the
17 efficient operation of the unified court system within the county of
18 Richmond and the city of Staten Island during and after the judicial
19 transition period.

20 § 178-i. Judicial transition services. During the judicial transition
21 period, the mayor and the comptroller of the city of Staten Island and
22 the mayor and the comptroller of the city of New York are authorized to
23 enter into agreements relating to the provision of municipal services
24 for the courts within the city of Staten Island. Such municipal services
25 may include, but shall not be limited to, correctional services.

26 § 178-j. Effect of existing collective bargaining agreements.
27 Notwithstanding any other provision of law:

28 (1) The provisions of this article shall not alter any existing
29 collective negotiating unit of nonjudicial employees or any provision of
30 a collective negotiating agreement in effect on the effective date of
31 this article.

32 (2) To the extent permitted by the state constitution, where a judi-
33 cial or nonjudicial officer or employee of the unified court system is
34 required as a condition of their continued employment to reside in the
35 city of New York and, on the effective date of this article, they reside
36 in the county of Richmond, such officer or employee shall be deemed to
37 reside in the city of New York for so long as they remain in their posi-
38 tion, provided such officer or employee continues to reside in the coun-
39 ty or in the city of New York.

40 (3) The nonjudicial personnel of the courts affected by this article
41 in office on the effective date of this article shall, to the extent
42 practicable, be continued without diminution of salaries and with the
43 same status and rights in the courts continued in the county of Rich-
44 mond.

45 § 7-001. Section 31 of the public housing law, as amended by chapter
46 829 of the laws of 1947, is amended to read as follows:

47 § 31. Scope of authority's jurisdiction. The territorial jurisdiction
48 of an authority established for a city or village shall be coterminous
49 with the territorial limits of such city or village, and the territorial
50 jurisdiction of an authority established for a town shall include all
51 such town, except that such territorial jurisdiction shall not include
52 any territory that lies within the boundaries of any village, whether
53 such village has or has not established an authority. The members of
54 such town authority shall if they consent and when authorized by resolu-
55 tions of the town board and the village board, act as the authority in

1 and for said village, the same as if it had been created especially for
2 said village.

3 Notwithstanding the provisions of this section, the New York city
4 housing authority, the creation and establishment of which was validated
5 pursuant to section four hundred of this chapter, shall continue to have
6 territorial jurisdiction for the five counties which had constituted
7 parts of the city of New York prior to the establishment of the city of
8 Staten Island.

9 § 7-002. Subdivision 3 of section 402 of the public housing law, as
10 added by chapter 96 of the laws of 2013, is amended to read as follows:

11 3. a. The authority shall consist of seven members appointed by the
12 mayor, one of whom shall be designated by the mayor as [~~chairman~~] chair-
13 person removable at [~~his or her~~] the mayor's pleasure. The term of
14 office of each member other than the [~~chairman~~] chairperson shall be
15 three years, provided, however, that the initial appointments of the six
16 members other than the [~~chairman~~] chairperson shall be as follows: two
17 shall be appointed for one-year terms, two shall be appointed for two-
18 year terms, and two shall be appointed for three-year terms. The mayor
19 shall file with the commissioner of housing a certificate of appointment
20 of the [~~chairman~~] chairperson and of each member. Any member other than
21 the [~~chairman~~] chairperson may be removed by the mayor upon filing in
22 the office of the commissioner of citywide administrative services and
23 serving upon the member the reasons therefor. Such document setting
24 forth the reasons shall be made available to the general public, which
25 shall include but not be limited to publishing the reasons on the New
26 York city housing authority's website. Three of such members shall be a
27 tenant of record or an authorized member of the tenant household, in
28 good standing, residing in one of the federal projects owned or operated
29 by the authority, provided, however, that for the initial appointments
30 of the three such members, one shall be among the members initially
31 appointed for one-year terms, one shall be among the members initially
32 appointed for two-year terms, and one shall be among the members
33 initially appointed for three-year terms. A vacancy in the office of a
34 member other than the [~~chairman~~] chairperson occurring otherwise than by
35 expiration of term shall be filled for the unexpired term. Further, any
36 vacancy in the office of a tenant member shall only be filled by the
37 appointment of an eligible tenant member, and such appointment shall be
38 made within ninety days of such vacancy.

39 b. Notwithstanding paragraph a of this subdivision, upon the estab-
40 lishment of a city of Staten Island and for so long as the New York city
41 housing authority shall have territorial jurisdiction in the city of
42 Staten Island, such authority shall consist of eight members, the eighth
43 of whom shall be appointed by the mayor of Staten Island and shall serve
44 for a five-year term. The mayor of the city of Staten Island shall file
45 with the commissioner of housing and the chairperson of the New York
46 city housing authority a certificate of appointment of such member. Such
47 member may be removed by the mayor of Staten Island for cause after a
48 public hearing. Such member may be of any political party. A vacancy in
49 the office of such member occurring other than by expiration of a term
50 shall be filled for the unexpired term.

51 § 7-003. Section 455 of the education law, as amended by chapter 724
52 of the laws of 1976, is amended to read as follows:

53 § 455. Relationship with the board of education and the city of New
54 York. 1. In order most effectively to carry out its corporate purposes,
55 the fund shall cooperate with the director of management and budget and
56 the board of education of the city of New York in matters relating to

1 land acquisition and capital planning for school buildings and facili-
2 ties. During the course of construction, reconstruction, rehabilitation
3 and improvement of combined occupancy structures the fund shall consult
4 with personnel of such board as the work progresses in matters relating
5 to space requirements, site plans, architectural concept, and substan-
6 tial changes in the plans and specifications therefor, and in matters
7 relating to the original furnishings, equipment, machinery and apparatus
8 needed to furnish and equip the school portion of such buildings and
9 structures, upon the completion of work. The board, on its part, shall
10 perform such functions and services for the fund as may be requested and
11 the fund shall pay to the board, from any monies of the fund available
12 for such purpose, the reasonable cost of such functions and services.

13 2. Notwithstanding subdivision one of this section, upon the estab-
14 lishment of a city of Staten Island, with respect to any fund activities
15 to take place within such city of Staten Island, the fund shall cooper-
16 ate with the mayor and comptroller of such city of Staten Island and the
17 board of education of the city school district of the city of Staten
18 Island in matters relating to land acquisition and capital planning for
19 school buildings and facilities to the same extent as with the respec-
20 tive officials of the city of New York.

21 § 7-004. Paragraph (c) of subdivision 1 of section 462 of the educa-
22 tion law, as separately amended by chapters 724 and 729 of the laws of
23 1976, is amended to read as follows:

24 (c) (i) To assure the continued operation and solvency of the capital
25 reserve fund for the carrying out of the public purposes of this arti-
26 cle, provision is made in paragraph (a) of this subdivision for the
27 accumulation in the capital reserve fund of an amount equal to the maxi-
28 mum amount of principal and interest maturing and becoming due and sink-
29 ing fund payments required to be made in any succeeding fiscal year on
30 all bonds of the fund then outstanding secured by the capital reserve
31 fund. In order further to assure such maintenance of the capital
32 reserve fund, the board of education shall annually request from the
33 city of New York and pay over to the fund, for deposit in the capital
34 reserve fund, such sum, if any, as shall be certified by the [~~chairman~~]
35 chairperson of the fund to the board, the mayor and the director of
36 management and budget of the city of New York as necessary to restore
37 the capital reserve fund to an amount equal to the maximum amount of
38 principal and interest maturing and becoming due and sinking fund
39 payments required to be made in the next succeeding fiscal year on the
40 bonds of the fund then outstanding secured by the capital reserve fund;
41 provided, however, that such sum shall have been first appropriated by
42 the city to the board or shall otherwise have been made lawfully avail-
43 able to the board for such purpose. The [~~chairman~~] chairperson of the
44 fund shall annually, not later than the fifteenth day of February in
45 each year, make and deliver to the board, the mayor and the director of
46 management and budget [~~his~~] their certificate stating the amount, if
47 any, required to restore the capital reserve fund to the amount afore-
48 said and the amount so stated, if any, shall be paid to the fund by the
49 board during the then current fiscal year of the fund. In the event of
50 the failure or inability of the board to pay over the stated amount to
51 the fund on or before August first of the same year, the [~~chairman~~]
52 chairperson of the fund shall forthwith make and deliver to the comp-
53 troller of the state of New York and the mayor and comptroller of the
54 city of Staten Island a further certificate restating the amount so
55 required and, after the comptroller of the state of New York shall have
56 given written notice to the commissioner of education, the mayor and

1 director of management and budget and the mayor and comptroller of the
2 city of Staten Island, such amount shall be paid over to the fund by the
3 comptroller of the state of New York out of the next payment of state
4 aid apportioned, first, to the city of New York on behalf of the city
5 school district of the city of New York for the support of common
6 schools or such other aid or assistance payable in support of common
7 schools as shall supersede or supplement such state aid for the support
8 of common schools, including federal moneys apportioned by the state to
9 the city of New York on behalf of the city school district for the
10 support of common schools and, thereafter, if such amounts are insuffi-
11 cient, from such similar aid payable to the city of Staten Island. Any
12 amount so paid over to the fund shall be deducted from the corresponding
13 apportionment of state education aid or other aid or assistance for
14 education otherwise credited to the board of education for its purposes
15 and shall not obligate the state to make or entitle the city or the
16 board of education or city of Staten Island to receive any additional or
17 increased apportionment or payment of state aid for school purposes.

18 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
19 the first of January next succeeding the date on which this subparagraph
20 shall have become a law, the fund shall not issue any bonds, notes or
21 other obligations secured by a capital reserve fund into which state aid
22 or other aid otherwise payable to the city of Staten Island is to be
23 deposited pursuant to this paragraph, provided, however, the fund may
24 issue refunding bonds to pay bonds previously issued, which refunding
25 bonds may be so secured if the fund gives reasonable adequate notice of
26 its intention to issue such refunding bonds to the mayor of the city of
27 Staten Island and the comptroller of the city of Staten Island and both
28 such officials are given a reasonable opportunity to participate at the
29 meeting or meetings of the board of the fund at which action is taken to
30 issue such refunding bonds.

31 § 7-005. Paragraph (c) of subdivision 3 of section 462 of the educa-
32 tion law, as amended by chapter 474 of the laws of 1996, is amended to
33 read as follows:

34 (c) (i) To assure the continued operation and solvency of the fund for
35 the carrying out of the public purposes of this article, provision is
36 made in paragraph (a) of this subdivision for the accumulation in a debt
37 service reserve fund of an amount equal to the debt service reserve fund
38 requirement on all bonds of the fund then outstanding secured by a debt
39 service or debt service reserve fund. In order further to assure such
40 maintenance of a debt service reserve fund, the board of education shall
41 annually request from the city of New York and pay over to the fund
42 after making the payment required by paragraph (c) of subdivision one of
43 this section for deposit in a debt service reserve fund, such sum, if
44 any, as shall be certified by the [~~chairman~~] chairperson of the fund to
45 the board, the mayor and the director of the budget of the city of New
46 York as necessary to restore such debt service reserve fund to an amount
47 equal to the debt service reserve fund requirement for the bonds of the
48 fund secured by such debt service reserve fund; provided, however, that
49 such sum shall have been first appropriated by the city to the board or
50 shall otherwise have been made lawfully available to the board for such
51 purpose. The [~~chairman~~] chairperson of the fund shall annually, not
52 later than the fifteenth day of February in each year, make and deliver
53 to the board, the mayor and the director of the budget [~~his~~] their
54 certificate stating the amount, if any, required to restore a debt
55 service reserve fund to the amount aforesaid and the amount so stated
56 after making the payment required by paragraph (c) of subdivision one of

1 this section if any, shall be paid to the fund by the board during the
2 then current fiscal year of the fund. In the event of the failure or
3 inability of the board to pay over the stated amount to the fund on or
4 before August first of the same year, the [~~chairman~~] chairperson of the
5 fund shall forthwith make and deliver to the comptroller of the state of
6 New York and the mayor and comptroller of the city of Staten Island a
7 further certificate restating the amount so required and, after the
8 comptroller of the state of New York shall have given written notice to
9 the commissioner, the mayor and director of the budget and the mayor and
10 comptroller of the city of Staten Island, such amount after making the
11 payment required by paragraph (c) of subdivision one of this section
12 shall be paid over to the fund by the comptroller of the state of New
13 York out of the next payment of state aid apportioned, first, to the
14 city of New York on behalf of the city school district of the city of
15 New York for the support of common schools or such other aid or assist-
16 ance payable in support of common schools as shall supercede or supple-
17 ment such state aid for the support of common schools, including federal
18 moneys apportioned by the state to the city of New York on behalf of the
19 city school district for the support of common schools and, thereafter,
20 if such amounts are insufficient, from such similar aid payable to the
21 city of Staten Island. Any amount so paid over to the fund under para-
22 graph (c) of subdivision one of this section shall be deducted from the
23 corresponding apportionment of state education aid or other aid or
24 assistance for education otherwise credited to the board of education or
25 the city of Staten Island for its purposes and shall not obligate the
26 state to make or entitle the city or the board of education or the city
27 of Staten Island to receive any additional or increased apportionment or
28 payment of state aid for school purposes.

29 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
30 the first of January next succeeding the date on which this subparagraph
31 shall have become a law, the fund shall not issue any bonds, notes or
32 other obligations secured by a debt service reserve fund into which
33 state aid or other aid otherwise payable to the city of Staten Island is
34 to be deposited pursuant to this paragraph, provided, however, the fund
35 may issue refunding bonds to pay bonds previously issued, which refund-
36 ing bonds may be so secured if the fund gives reasonable adequate notice
37 of its intention to issue such refunding bonds to the mayor of the city
38 of Staten Island and the comptroller of the city of Staten Island and
39 both such officials are given a reasonable opportunity to participate at
40 the meeting or meetings of the board of the fund at which action is
41 taken to issue such refunding bonds.

42 § 7-006. Subdivision 1 of section 1045-c of the public authorities
43 law, as added by chapter 513 of the laws of 1984, is amended to read as
44 follows:

45 1. A corporation known as the New York city municipal water finance
46 authority is hereby created for public purposes and charged with the
47 duties and having the powers provided in this title. The authority shall
48 be a body corporate and politic constituting a public benefit corpo-
49 ration. It shall be administered by a board of directors consisting of
50 [~~seven~~] eight members as follows: the commissioner of environmental
51 protection of the city, the state commissioner of environmental conser-
52 vation, the director of management and budget of the city, the commis-
53 sioner of finance of the city, two public members to be appointed by the
54 mayor, one public member to be appointed by the mayor of Staten Island
55 and one public member to be appointed by the governor. One public
56 member appointed by the mayor shall serve for a term of one year, one

1 public member appointed by the mayor shall serve for a term of two
2 years, and the public [~~member~~] members appointed by the governor and
3 mayor of Staten Island shall serve for a term of two years from January
4 first next succeeding the date of their appointment. Their successors
5 shall serve for terms of two years each. Members shall continue in
6 office until their successors have been appointed and qualified. The
7 mayor, mayor of Staten Island or the governor shall fill any vacancy
8 which may occur by reason of death, resignation or otherwise in a manner
9 consistent with the original appointment. A public member may be
10 removed by the mayor, mayor of Staten Island, or the governor, [~~whichever~~
11 er] whoever appointed [~~him~~] such member, for cause, but not without an
12 opportunity to be heard in person or by counsel, in [~~his~~] such member's
13 defense, upon not less than ten days' notice. The mayor shall select a
14 [~~chairman~~] chairperson from among the directors appointed by [~~him~~] such
15 mayor who shall serve in such capacity at [~~his~~] their pleasure. The
16 [~~chairman~~] chairperson shall preside over all meetings of the board of
17 directors and shall have such other duties as may be prescribed by the
18 board.

19 § 7-007. Subdivision 2 of section 1045-f of the public authorities
20 law, as added by chapter 513 of the laws of 1984, is amended to read as
21 follows:

22 2. The water board shall consist of seven members, six of which shall
23 be appointed by the mayor and, the seventh of which shall be appointed
24 by the mayor of Staten Island. The mayor of Staten Island shall fill
25 the earlier of the first expiration of a term or the first vacancy
26 occurring after the date of establishment of the city of Staten Island
27 and any successor thereto. Terms of office of the members shall be two
28 years except that the terms of four of the board members first appointed
29 shall be one year. At least one member shall have experience in the
30 science of water resource development. No member shall be a director of
31 the authority. The mayor shall appoint a [~~chairman~~] chairperson from
32 among the members of the board. All members shall continue to hold
33 office until their successors are appointed and qualified. Vacancies
34 shall be filled in the manner provided for original appointments. Vacan-
35 cies, occurring otherwise than by expiration of term of office, shall be
36 filled in the same manner as original appointments for the unexpired
37 terms.

38 § 7-008. Subdivision 5 of section 1045-f of the public authorities
39 law, as added by chapter 513 of the laws of 1984, is amended to read as
40 follows:

41 5. The appointing mayor may remove any member for inefficiency,
42 neglect of duty or misconduct in office after giving such member a copy
43 of the charges against such member and an opportunity to be heard and
44 defended, in person or by counsel, upon not less than ten days' notice.
45 If any member shall be so removed, the appointing mayor shall file in
46 the office of the clerk of the city a complete statement of charges
47 against such member, and the appointing mayor's findings thereon,
48 together with a complete record of the proceedings.

49 § 7-009. Paragraphs e and f of subdivision 1 of section 656 of the
50 private housing finance law, as amended by chapter 174 of the laws of
51 1992, are amended to read as follows:

52 e. (i) To assure the continued operation and solvency of the corpo-
53 ration for the carrying out of its corporate purposes, provision is made
54 in paragraph a of this subdivision for the accumulation in each capital
55 reserve fund of an amount equal to the maximum capital reserve fund
56 requirement. In order further to assure such maintenance of each capital

1 reserve fund, there shall be paid by the city to the corporation for
2 deposit in each capital reserve fund on or before the first day of
3 April, in each year, such amount, if any, needed for the purpose of
4 restoring each such capital reserve fund to the maximum capital reserve
5 fund requirement for such fund, as shall be certified by the chairperson
6 of the corporation to the mayor and the director of management and budg-
7 et on or before the first day of December next preceding; provided that
8 any such amount shall have been first appropriated by or on behalf of
9 the city for such purpose or shall have been otherwise made available
10 from the proceeds of notes or bonds of the city authorized and issued
11 pursuant to the local finance law for such purpose, which is hereby
12 determined to be a specific object or purpose having a period of proba-
13 ble usefulness of five years. In the event of the failure or inability
14 of the city to pay over to the corporation, in full, on or before such
15 first day of April the amount so certified the chairperson of the corpo-
16 ration shall forthwith certify to the comptroller of the state of New
17 York the amount remaining unpaid and thereupon the state comptroller
18 shall pay to the corporation, out of the first moneys available for the
19 next succeeding payments of [~~(i)~~] (A) state aid apportioned to the city
20 of New York and, to the extent the amounts available therefor are insuf-
21 ficient, state aid apportioned to the city of Staten Island, as per
22 capita aid for the support of local government pursuant to section
23 fifty-four of the state finance law or [~~(i)~~] (B) such other aid or
24 assistance payable by the state to the city and to the extent the
25 amounts available therefor are insufficient, such aid or assistance
26 payable by the state to the city of Staten Island and not otherwise
27 allocated as shall supersede or supplement such state per capita aid,
28 including federal moneys apportioned to the city and, to the extent the
29 amounts available therefor are insufficient, such moneys apportioned to
30 the city of Staten Island by the state, such amount remaining unpaid,
31 after giving written notice to the director of management and budget of
32 each amount to be paid out of such state aid, until the amount in each
33 such capital reserve fund is restored to the maximum capital reserve
34 fund requirement thereof; provided, however, that prior to the issuance
35 of any notes or bonds of the corporation pursuant to this article the
36 city shall have enacted a local law authorizing payments from such
37 sources into such a fund so long as any notes or bonds of the corpo-
38 ration shall be outstanding and unpaid, and provided further that
39 moneys, if any, payable to the city university construction fund pursu-
40 ant to the provisions of the city university construction fund act shall
41 be paid, in full, to such fund, prior to any payments therefrom to the
42 corporation. Any amount so paid over to the corporation shall be
43 deducted from the corresponding apportionment of such per capita state
44 aid otherwise payable to the city of New York or the city of Staten
45 Island, as applicable, and shall not obligate the state to make nor
46 entitle the city or the city of Staten Island to receive any additional
47 apportionment or payment of per capita state aid. All amounts paid over
48 to the corporation as provided in this [~~paragraph~~] subparagraph, includ-
49 ing amounts paid by the state comptroller out of payments of such state
50 aid, shall constitute and be accounted for as non-interest bearing loans
51 by the city or the city of Staten Island, as applicable to the corpo-
52 ration and, subject, subordinate and junior to the rights of the holders
53 of any notes or bonds of the corporation theretofore or thereafter
54 issued, shall be repaid to the city from [~~(i)~~] (A) moneys in such capi-
55 tal reserve fund in excess of the maximum capital reserve fund require-

1 ment thereof or [~~(ii)~~] (B) any moneys of the corporation not required
2 for any other of its corporate purposes.

3 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
4 the first of January next succeeding the date on which this subparagraph
5 shall have become a law, the corporation shall not issue any bonds,
6 notes or other obligations secured by a capital reserve fund into which
7 per capita state aid or other aid otherwise payable to the city of
8 Staten Island is to be deposited pursuant to this subparagraph,
9 provided, however, the corporation may issue refunding bonds to pay
10 bonds previously issued, which refunding bonds may be so secured if the
11 corporation gives reasonable adequate notice of its intention to issue
12 such refunding bonds to the mayor of the city of Staten Island and the
13 comptroller of the city of Staten Island and both such officials are
14 given a reasonable opportunity to participate at the meeting or meetings
15 of the board of the corporation at which action is taken to issue such
16 refunding bonds.

17 f. In the event the chairperson of the corporation shall certify to
18 the mayor and director of management and budget or to the state comp-
19 troller any amount necessary to restore a capital reserve fund to the
20 maximum capital reserve fund requirement thereof pursuant to subdivision
21 e of this section, the chairperson shall simultaneously deliver to the
22 mayor of the city of Staten Island and the comptroller of the city of
23 Staten Island and additionally to such persons a statement of the cause
24 or causes of such capital reserve fund deficiency and the measures to be
25 taken by the corporation or the department of housing preservation and
26 development to insure repayment of any loans made by the city or the
27 city of Staten Island to the corporation, including amounts paid by the
28 state comptroller out of payments of state aid, for the purpose of
29 restoring such capital reserve fund to the maximum capital reserve fund
30 requirement thereof and to prevent the recurrence of any such deficien-
31 cy.

32 § 7-010. Subdivision 4 of section 1680-b of the public authorities
33 law, as amended by chapter 62 of the laws of 1988, is amended to read as
34 follows:

35 4. In the event that a participating municipality fails to pay to the
36 authority when due all or part of the rentals and other payments payable
37 pursuant to any lease, sublease or agreement with the authority, the
38 chairman or another officer of the authority shall certify at the times
39 provided in this subdivision the amount of rentals and other payments
40 then due from such participating municipality and unpaid. The state
41 comptroller, upon receipt of such certificate, shall deduct the amount
42 of such rentals and other payments as remains unpaid to the authority
43 first from the aid payable to such participating municipality from the
44 court facilities incentive aid fund established by section ninety-four
45 of the state finance law and, then, from the next succeeding payments of
46 state aid apportioned to such participating municipality, as revenue
47 sharing, per capita aid, and any other aid pursuant to section fifty-
48 four of the state finance law and, then, from the next succeeding
49 payments of state aid for any local governmental administrative costs
50 that are reimbursable to the participating municipality pursuant to
51 state law and, then, from the next succeeding payments of state aid from
52 moneys appropriated pursuant to section six hundred eight of the public
53 health law and pursuant to section ten-c of the highway law; provided,
54 however, that the right of the authority to the payment of any amount
55 deducted by the state comptroller pursuant to this section from per
56 capita aid apportioned to the city of New York or, to the extent insuf-

1 ficiant, the city of Staten Island shall be subject and subordinate to
2 the rights of the city university construction fund pursuant to section
3 sixty-two hundred seventy-nine of the education law, the New York city
4 housing development corporation pursuant to section six hundred fifty-
5 six of the private housing finance law, the trustees of the police
6 pension fund pursuant to paragraph e of subdivision seven of section
7 fifty-four of the state finance law, and the municipal assistance corpo-
8 ration for the city of New York pursuant to section three thousand thir-
9 ty-six-a of this chapter and subdivision one of section ninety-two-e of
10 the state finance law. In order to insure that the amount of rentals
11 and other payments due and unpaid by a participating municipality are
12 paid, the authority on or within thirty days prior to January twenty-
13 fifth, April twenty-fifth, July twenty-fifth and October twenty-fifth of
14 each year shall certify to the state comptroller the amount of rentals
15 and other payments then due and unpaid by each participating munici-
16 pality pursuant to any lease, sublease or other agreement. The amount
17 required to be deducted by the state comptroller pursuant to this subdivi-
18 sion shall be deducted from such aid, whether or not the state aid
19 from which such deduction is to be made is then payable to the partic-
20 ipating municipality, and thereupon paid to the authority. The amount of
21 state aid payable to such participating municipality shall be reduced by
22 the amount deducted by the state comptroller notwithstanding the amount
23 appropriated and apportioned by the state to such participating munici-
24 pality, and the state shall not be obligated to make and the participat-
25 ing municipality shall not be entitled to receive any additional appor-
26 tionment or payment of such state aid. Nothing shall be construed to
27 create an obligation upon the state to appropriate moneys, to preclude
28 the state from reducing the amount of moneys appropriated or level of
29 assistance provided, or to preclude the state from altering or modifying
30 the manner in which it provides for or provides assistance.

31 § 7-011. Section 1727 of the public authorities law is amended by
32 adding a new subdivision 9 to read as follows:

33 9. Notwithstanding the provisions of this section or any other
34 provision of law to the contrary, the authority shall continue its
35 corporate existence regardless of the alteration of the composition of
36 the board of education of the city school district of the city of New
37 York caused by the incorporation of the city of Staten Island and the
38 establishment of the city school district of the city of Staten Island.

39 § 8-001. Subdivision 1 of section 23 of the executive law, as amended
40 by chapter 385 of the laws of 2017, is amended to read as follows:

41 1. Each county, except Richmond county and those counties contained
42 within the city of New York, and each city with a population of one
43 million or more, shall prepare a comprehensive emergency management
44 plan. Each city with a population of less than one million, town and
45 village is authorized to prepare a comprehensive emergency management
46 plan. The disaster preparedness commission shall provide assistance and
47 advice for the development of such plans. Each city with a population of
48 less than one million, town and village plan shall be coordinated with
49 the county plan.

50 § 8-002. Subdivision 1 of section 101-b of the executive law, as
51 added by chapter 1214 of the laws of 1971, is amended to read as
52 follows:

53 1. Definitions. As used in this section,

54 a. "Agency" means any state board, bureau, commission, department,
55 division or officer authorized by law to adopt rules.

1 b. "Rule" means the whole or part of each agency statement of general
2 applicability or regulation or code that implements or applies law,
3 including the amendment, suspension or repeal thereof.

4 c. "Municipal corporation" means [~~a~~] any county outside the [~~city~~]
5 cities of New York and Staten Island, a city, a town, a village or a
6 school district.

7 d. "Governing body" means:

8 (1) In a county, a board of supervisors, county legislature or other
9 body vested by its charter, other law or other valid enactment with
10 jurisdiction to enact local laws;

11 (2) In a city, the board of aldermen, a common council, commission or
12 other body vested by its charter or other law with jurisdiction to enact
13 ordinances or local laws;

14 (3) In a town, the town board;

15 (4) In a village, the board of trustees; and

16 (5) In a school district, the board of education, board of trustees or
17 sole trustee.

18 § 8-003. Intentionally omitted.

19 § 8-004. Subdivisions 1, 2, 3, 4 and 6 of section 246 of the executive
20 law, subdivisions 1, 2 and 3 as amended by section 10 of part D of chap-
21 ter 56 of the laws of 2010, subdivision 4 as amended by section 102 of
22 part WWW of chapter 59 of the laws of 2017, and subdivision 6 as added
23 by chapter 479 of the laws of 1970 and as renumbered by chapter 813 of
24 the laws of 1985, are amended to read as follows:

25 1. The program of state aid to county probation services shall be
26 administered by the division of criminal justice services with the
27 advice of the state probation commission and the director of the office
28 of probation and correctional alternatives. Funds appropriated to the
29 division for distribution as state aid to county probation services
30 [~~and~~], to the probation services of New York city and to the probation
31 services of the city of Staten Island shall be distributed by the divi-
32 sion in accordance with rules and regulations adopted by the commission-
33 er of the division of criminal justice services after consultation with
34 the state probation commission and the director of the office of
35 probation and correctional alternatives.

36 2. State aid shall be granted to the city of New York, the city of
37 Staten Island and the respective counties outside [~~the city of New York~~]
38 such cities for expenditures to be incurred by the county or [~~city~~] such
39 cities in maintaining and improving local probation services subject to
40 amounts appropriated for this purpose. State aid grants shall not be
41 used for expenditures for capital additions or improvements, or for debt
42 service costs for capital improvements.

43 State aid shall be granted by the commissioner of the division of
44 criminal justice services after consultation with the state probation
45 commission and the director of the office of probation and correctional
46 alternatives, provided the respective counties or the city of Staten
47 Island or the city of New York conform to standards relating to the
48 administration of probation services as adopted by the commissioner of
49 the division of criminal justice services after consultation with the
50 state probation commission and the director of the office of probation
51 and correctional alternatives.

52 3. Applications from counties or the city of Staten Island or the city
53 of New York for state aid under this section shall be made by filing
54 with the division of criminal justice services, a detailed plan, includ-
55 ing cost estimates covering probation services for the fiscal year or
56 portion thereof for which aid is requested. Included in such estimates

1 shall be clerical costs and maintenance and operation costs as well as
2 salaries of probation personnel and such other pertinent information as
3 the commissioner of the division of criminal justice services may
4 require. Items for which state aid is requested under this section shall
5 be duly designated in the estimates submitted. The commissioner of the
6 division of criminal justice services, after consultation with the state
7 probation commission and the director of the office of probation and
8 correctional alternatives, shall approve such plan if it conforms to
9 standards relating to the administration of probation services as speci-
10 fied in the rules adopted by ~~[him or her]~~ such commissioner.

11 4. An approved plan and compliance with standards relating to the
12 administration of probation services promulgated by the commissioner of
13 the division of criminal justice services shall be a prerequisite to
14 eligibility for state aid.

15 The commissioner of the division of criminal justice services may take
16 into consideration granting additional state aid from an appropriation
17 made for state aid for county probation services for counties or the
18 city of Staten Island or the city of New York when a county or the city
19 of Staten Island or the city of New York demonstrates that additional
20 probation services were dedicated to intensive supervision programs and
21 intensive programs for sex offenders. The commissioner shall grant addi-
22 tional state aid from an appropriation dedicated to juvenile risk inter-
23 vention services coordination by probation departments which shall
24 include, but not be limited to, probation services performed under arti-
25 cle three of the family court act. The administration of such additional
26 grants shall be made according to rules and regulations promulgated by
27 the commissioner of the division of criminal justice services. Each
28 county and the city of Staten Island and the city of New York shall
29 certify the total amount collected pursuant to section two hundred
30 fifty-seven-c of this chapter. The commissioner of the division of crim-
31 inal justice services shall thereupon certify to the comptroller for
32 payment by the state out of funds appropriated for that purpose, the
33 amount to which the county or the city of Staten Island or the city of
34 New York shall be entitled under this section. The commissioner shall,
35 subject to an appropriation made available for such purpose, establish
36 and provide funding to probation departments for a continuum of
37 evidence-based intervention services for youth alleged or adjudicated
38 juvenile delinquents pursuant to article three of the family court act
39 or for eligible youth before or sentenced under the youth part in
40 accordance with the criminal procedure law. Such additional state aid
41 shall be made in an amount necessary to pay one hundred percent of the
42 expenditures for evidence-based practices and juvenile risk and
43 evidence-based intervention services provided to youth sixteen years of
44 age or older when such services would not otherwise have been provided
45 absent the provisions of [~~a~~] part WWW of chapter fifty-nine of the laws
46 of two thousand seventeen [~~that increased the age of juvenile jurisdic-~~
47 ~~tion~~].

48 6. The director, after consultation with the state probation commis-
49 sion, may authorize or require the comptroller to withhold the payment
50 of state aid to any county, or the city of Staten Island or the city of
51 New York, in the event that such county, or the city of Staten Island or
52 the city of New York, (a) fails to conform to standards of probation
53 administration as formulated by the director pursuant to this section,
54 (b) discontinues or fails to follow an approved plan, or (c) fails to
55 enforce in a satisfactory manner rules promulgated pursuant to this

1 section, or laws now in effect or hereafter adopted which relate in any
2 manner to the administration of probation services.

3 § 8-004-a. The second undesignated paragraph of subdivision 4 of
4 section 246 of the executive law, as amended by section 103 of part WWW
5 of chapter 59 of the laws of 2017, is amended to read as follows:

6 The commissioner of the division of criminal justice services may take
7 into consideration granting additional state aid from an appropriation
8 made for state aid for county probation services for counties or the
9 city of Staten Island or the city of New York when a county or the city
10 of Staten Island or the city of New York demonstrates that additional
11 probation services were dedicated to intensive supervision programs and
12 intensive programs for sex offenders. The commissioner shall grant addi-
13 tional state aid from an appropriation dedicated to juvenile risk inter-
14 vention services coordination by probation departments which shall
15 include, but not be limited to, probation services performed under arti-
16 cle three of the family court act. The administration of such additional
17 grants shall be made according to rules and regulations promulgated by
18 the commissioner of the division of criminal justice services. Each
19 county and the city of Staten Island and the city of New York shall
20 certify the total amount collected pursuant to section two hundred
21 fifty-seven-c of this chapter. The commissioner of the division of crim-
22 inal justice services shall thereupon certify to the comptroller for
23 payment by the state out of funds appropriated for that purpose, the
24 amount to which the county or the city of Staten Island or the city of
25 New York shall be entitled under this section. The commissioner shall,
26 subject to an appropriation made available for such purpose, establish
27 and provide funding to probation departments for a continuum of
28 evidence-based intervention services for youth alleged or adjudicated
29 juvenile delinquents pursuant to article three of the family court act
30 or for eligible youth before or sentenced under the youth part in
31 accordance with the criminal procedure law.

32 § 8-005. Subdivision 1 of section 255 of the executive law, as added
33 by chapter 603 of the laws of 1973, is amended to read as follows:

34 1. There is hereby created a department of probation in and for the
35 city of New York to have charge of all probation work in the supreme,
36 family and criminal courts in the counties of Bronx, Kings, New York[7]
37 and Queens [~~and-Richmond~~].

38 § 8-006. The executive law is amended by adding a new section 255-a to
39 read as follows:

40 § 255-a. Probation in the city of Staten Island. 1. There is hereby
41 created a department of probation in and for the city of Staten Island
42 to have charge of all probation work in the supreme, family and other
43 criminal courts in the county of Richmond.

44 2. The head of such department shall be a director of probation
45 appointed by the mayor of the city of Staten Island to serve during the
46 pleasure of the mayor. The director shall have charge of the adminis-
47 tration of the department and shall be responsible for carrying out the
48 functions of the department including intake, investigation, super-
49 vision, conciliation and pre-disposition social treatment in cases
50 coming to the courts referred to in this section. The director may,
51 from time to time, create, abolish, transfer and consolidate bureaus and
52 other units within the department as such director may determine neces-
53 sary for efficient operation thereof. The director also shall have the
54 power to appoint and remove such deputy directors, assistants, probation
55 officers and other employees as may be needed for the performance of the
56 duties of the department and may prescribe their duties and fix their

1 compensation, within appropriations made available therefor by the city
2 of Staten Island and subject to all applicable civil service laws and
3 rules and regulations. The director may, in such director's discretion,
4 appoint volunteer probation officers, when necessary, provided they have
5 the qualifications required of salaried officers, but no such volunteer
6 probation officer shall receive pay from the public funds for such offi-
7 cer's services. The city of Staten Island shall make the necessary
8 appropriation for the salaries of the director and of all officers and
9 employees of the department as referred to in this subdivision, as well
10 as for the expenses actually and necessarily incurred by such director,
11 officers and employees in the performance of their duties.

12 3. The director shall discharge such director's powers and responsi-
13 bilities in accordance with all laws and rules applicable to probation
14 and with the general rules regulating methods and procedure in the
15 administration of probation as adopted from time to time pursuant to
16 section two hundred forty-three of this chapter. The director may adopt
17 departmental rules, not inconsistent with law or the aforesaid general
18 rules, to regulate the policies, programs, standards, and methods of
19 procedure in relation to probation and the powers and duties of officers
20 and employees as in the director's judgment are deemed proper.

21 4. Notwithstanding any other provision of law or of the Staten Island
22 city charter or administrative code, any duly appointed officer or
23 employee of such probation department may reside in any county within
24 the state.

25 § 8-007. Subdivisions 1 and 4 of section 257-c of the executive law,
26 as added by chapter 55 of the laws of 1992, are amended to read as
27 follows:

28 1. Notwithstanding any other provision of law, every county, the city
29 of Staten Island and the city of New York, may adopt a local law requir-
30 ing individuals currently serving or who shall be sentenced to a period
31 of probation upon conviction of any crime under article thirty-one of
32 the vehicle and traffic law to pay to the local probation department
33 with the responsibility of supervising the probationer an administrative
34 fee of thirty dollars per month. The department shall waive all or part
35 of such fee where, because of the indigence of the offender, the payment
36 of said surcharge would work an unreasonable hardship on the person
37 convicted, [~~his or her~~] such person's immediate family, or any other
38 person who is dependent on such person for financial support.

39 4. In the event of non-payment of any fees which have not been waived
40 by the local probation department, the county, the city of Staten Island
41 or the city of New York may seek to enforce payment in any manner
42 permitted by law for enforcement of a debt.

43 § 8-008. Subdivision 3 of section 262 of the executive law, as amended
44 by section 28 of part A of chapter 56 of the laws of 2010, is amended to
45 read as follows:

46 3. Upon approval by the board, by a majority of its members, any coun-
47 ty outside the [~~city~~] cities of New York and Staten Island acting
48 through its county executive, and upon approval of the local legislative
49 body, may submit a proposed service plan to the office for approval. The
50 city of New York acting through the mayor and upon approval by the board
51 of estimate and the city of Staten Island acting through the mayor and
52 upon approval by the common council may submit a proposed service plan
53 to the office for approval.

54 § 8-009. Subdivisions 1 and 2 of section 266 of the executive law, as
55 added by chapter 338 of the laws of 1989, are amended to read as
56 follows:

1 1. Counties and the [~~city~~] cities of New York and Staten Island may
2 submit approved amendments for alcohol and substance abuse programs as
3 defined in this article as part of or in addition to an approved plan.
4 In accordance with this article, nothing in this section shall prohibit
5 the development of regional alcohol and substance abuse programs by two
6 or more counties, the city of Staten Island or cities with a population
7 of one million or more.

8 2. Such approved amendments shall include a statement by the county or
9 the city of New York or the city of Staten Island indicating such
10 municipality's understanding that funding for eligible alcohol and
11 substance abuse programs shall be in accordance with subdivision four of
12 this section and the municipality's commitment to meet the funding
13 requirements as set forth in such subdivision.

14 § 8-010. Section 267 of the executive law, as amended by section 33 of
15 part A of chapter 56 of the laws of 2010, is amended to read as follows:

16 § 267. Office reports. The office shall submit to the governor, the
17 temporary president of the senate, the speaker of the assembly, the
18 [~~chairman~~] chairperson of the senate crime and correction committee and
19 the [~~chairman~~] chairperson of the assembly committee on codes by October
20 first of each year its evaluation and assessment of this alternatives
21 planning and programming effort by the counties. Such report shall
22 include, but not be limited to, the status of the development of such
23 plans, the approval and implementation of such plans, the success of the
24 programs, in terms of their utilization, effect on jail population,
25 results of the analyses provided counties and the [~~city~~] cities of New
26 York and Staten Island on the relationship between alcohol, drugs and
27 crime and the success of the eligible alcohol and substance abuse
28 programs and sentencing decisions together with any recommendations with
29 respect to the proper operation or improvement of planning and implemen-
30 tation of effective alternatives to detention and alternatives to incar-
31 ceration programs in counties.

32 § 8-011. Subdivisions 1 and 7 of section 530 of the executive law,
33 subdivision 1 as amended by section 4 of subpart B of part Q of chapter
34 58 of the laws of 2011, subdivision 7 as amended by section 21 of part K
35 of chapter 56 of the laws of 2019, are amended to read as follows:

36 1. Definitions. As used in this section, the term "municipality" shall
37 mean a county, the city of Staten Island or a city having a population
38 of one million or more.

39 7. The agency administering detention for each county and the city of
40 Staten Island and the city of New York shall submit to the office of
41 children and family services, at such times and in such form and manner
42 and containing such information as required by the office of children
43 and family services, an annual report on youth remanded pursuant to
44 article three or seven of the family court act who are detained during
45 each calendar year including, commencing January first, two thousand
46 twelve, the risk level of each detained youth as assessed by a detention
47 risk assessment instrument approved by the office of children and family
48 services provided, however, that the report due January first, two thou-
49 sand twenty-one and thereafter shall not be required to contain any
50 information on youth who are subject to article seven of the family
51 court act. The office may require that such data on detention use be
52 submitted to the office electronically. Such report shall include, but
53 not be limited to, the reason for the court's determination in accord-
54 ance with section 320.5 or seven hundred thirty-nine of the family court
55 act to detain the youth; the offense or offenses with which the youth is
56 charged; and all other reasons why the youth remains detained. The

1 office shall submit a compilation of all the separate reports to the
2 governor and the legislature.

3 § 8-012. Subdivisions 1, 2 and 4 of section 214 of the elder law are
4 amended to read as follows:

5 1. Definitions. As used in this section, the following words shall
6 have the following meanings:

7 (a) "Designated agency" shall mean an agency which is designated by
8 the chief executive officer of the county if there be one, or otherwise
9 the governing board of such county, or the chief executive officer of
10 the city of New York or the mayor of the city of Staten Island, or the
11 governing board of an Indian tribal council; which is either a unit of
12 county government or the city of New York or the city of Staten Island
13 or an Indian tribal organization or a private non-profit agency, and
14 which is the area agency on aging created pursuant to the federal older
15 Americans act of 1965.

16 (b) "Elderly person" shall mean a person sixty years of age or older.

17 (c) "County" shall mean a county, as defined in section three of the
18 county law, except that the city of New York shall be considered one
19 county.

20 (d) "Base year expenditures" and "base year services" shall mean the
21 level of expenditures and services in the year prior to the first year
22 for which a county plan is submitted or in such county's two thousand
23 five fiscal year, whichever is greater.

24 (e) "Community services" shall mean services for elderly persons which
25 are provided by a public or governmental agency or non-profit agency,
26 and which are provided in the home of an elderly person or in community
27 settings such as senior citizens centers, housing projects, or agency
28 offices. Such services shall not include any services provided pursuant
29 to the public health law other than home care services.

30 (f) "Community service projects" shall mean community services
31 financed pursuant to paragraph (b) of subdivision four of this section.

32 (g) "County plan" shall mean a plan for community services prepared by
33 a county pursuant to this section.

34 (h) "Non-profit agency" shall mean a corporation organized or existing
35 pursuant to the not-for-profit corporation law.

36 (i) "Program year" shall mean the period from April first through
37 March thirty-first of the following calendar year.

38 (j) "First program year" for a county shall mean the initial year for
39 which the county has received approval for its county plan.

40 2. County plans for improving the availability of community services
41 to the elderly. (a) Counties with a designated agency are required to
42 submit a county plan for a two-, three-, or four-year period determined
43 by the director, with an annual update containing a budget request for
44 the forthcoming program year and such other information as shall be
45 required by the director, for improving the delivery of community
46 services for elderly persons in the format prescribed by the director.
47 The plan for the city of New York or the plan for the city of Staten
48 Island shall specifically address the needs of each county within such
49 city. Such plan shall be a comprehensive description of the manner in
50 which the county intends to address the needs of elderly persons living
51 in the county through improved coordination of existing community
52 services and by the development of any new or expanded community service
53 projects which will improve the delivery of services to the elderly.
54 Such plan shall contain:

55 (1) a statement of goals and objectives for addressing the needs of
56 elderly persons in the county, an assessment of the needs of elderly

1 persons residing in the county, a description of public and private
2 resources that currently provide community services to elderly persons
3 within the county, a description of intended actions to consolidate and
4 coordinate existing community services administered by county govern-
5 ment, a description of the intended actions to coordinate congregate
6 services programs for the elderly operated within the county pursuant to
7 section two hundred seventeen of this title with other community
8 services for the elderly, a description of the means to coordinate other
9 community services for elderly persons in the county with those adminis-
10 tered by county government, and a statement of the priorities for the
11 provision of community services during the program period covered by
12 such plan;

13 (2) an identification of community service projects to be developed to
14 improve the delivery of services, a budget request for approval for the
15 forthcoming year which individually identifies each community service
16 project to be funded pursuant to paragraph (b) of subdivision four of
17 this section, letters of comment from the appropriate local agencies on
18 the relationship and expected impact of the proposed community service
19 projects, assurances that community service projects will provide
20 services to those most in need, an indication of fee schedules by which
21 elderly persons participating in community service projects may contrib-
22 ute to the costs of such projects, and an indication of how the effec-
23 tiveness of such community service projects will be evaluated;

24 (3) an identification of planning, coordination, and administrative
25 activities necessary to achieve the goals and objectives of the plan,
26 together with a budget request for such activities for approval for the
27 forthcoming year to be funded pursuant to paragraph (a) of subdivision
28 four of this section, and assurances by the county that it will comply
29 with the requirements of state and federal law; and

30 (4) such other components as may be required pursuant to regulations
31 promulgated by the director.

32 (b) Such county plan for community services or annual update shall be
33 prepared by the designated agency and approved by the chief executive
34 officer of the county, if there be one, or otherwise the governing board
35 of the county, or the chief executive of the city of New York or the
36 mayor of the city of Staten Island and submitted to the director no
37 later than ninety days prior to the beginning of the program period
38 covered by such plan or annual update. Prior to a submission of a coun-
39 ty plan or annual update to the director for approval, the designated
40 agency shall conduct such public hearings as may be required by regu-
41 lations of the director, provided that there shall be at least one such
42 hearing, and one in each county contained within the city of New York or
43 the city of Staten Island.

44 (c) The director shall review such county plan and may approve or
45 disapprove such plan, or any part, program, or project within such plan,
46 and shall propose such modifications and conditions as are deemed appro-
47 priate and necessary. Compliance with paragraphs (a) and (b) of this
48 subdivision shall be the basis for approval of a county plan. The direc-
49 tor shall establish by regulation the dates for notifying the designated
50 agency of approval or disapproval of a county plan. In the event the
51 director shall disapprove the proposed county plan, the county submit-
52 ting such application shall be afforded an opportunity for an adjudica-
53 tory hearing, as prescribed by article three of the state administrative
54 procedure act.

55 (d) Notwithstanding any provision of this section, nothing contained
56 in this section shall give the director or a designated agency any

1 administrative, fiscal, supervisory, or other authority whatsoever over
2 any plans, programs or expenditures authorized pursuant to titles eigh-
3 teen, nineteen and twenty of the federal social security act, or over
4 any unit of state or local government.

5 (e) Counties with a designated agency may submit to the director a
6 letter of intent, in the form and by the date prescribed by the director
7 with the approval of the director of the budget, evidencing the commit-
8 ment of the county to develop a county home care plan for functionally
9 impaired elderly.

10 (f) Within the amounts appropriated therefor, counties submitting an
11 approved letter of intent pursuant to paragraph (e) of this subdivision
12 shall be eligible for reimbursement of one hundred percent of the
13 approved expenditures for preparing a county home care plan for func-
14 tionally impaired elderly. Such a grant-in-aid shall be available to a
15 county only once and shall be limited to one-half the amount available
16 to such county pursuant to subparagraph one of paragraph (a) of subdivi-
17 sion four of this section; provided however that in either of the two
18 years immediately following its first submission of a home care plan for
19 functionally impaired elderly, a county which does not receive state aid
20 during such year for expanded non-medical in-home services, non-institu-
21 tional respite services, case management services, and ancillary
22 services pursuant to paragraph (j) of subdivision four of this section,
23 may apply for reimbursement of one hundred percent of the approved
24 expenditures for revising such home care plan, limited to one-quarter
25 the amount available to such county pursuant to subparagraph one of
26 paragraph (a) of subdivision four of this section.

27 (g) County home care plans for functionally impaired elderly prepared
28 pursuant to this subdivision shall include a comprehensive description
29 of all aspects of home care, non-institutional respite, case management,
30 and ancillary services available to elderly persons in the county; a
31 description of intended actions to coordinate such home care, non-insti-
32 tutional respite, case management, and ancillary services to func-
33 tionally impaired elderly persons in their county provided under this
34 section with other services to elderly persons; a proposal for expanded
35 non-medical in-home services, non-institutional respite services, case
36 management services, and ancillary services for functionally impaired
37 elderly persons with unmet needs to support such persons' continued
38 residence in their homes; and such other components as may be required
39 pursuant to regulations promulgated by the director, including how the
40 proposed expanded non-medical in-home services, non-institutional
41 respite services, case management services, and ancillary services will
42 be delivered to unserved or underserved populations.

43 (h) Such county home care plan for functionally impaired elderly shall
44 be prepared by the designated agency after consultation with the social
45 services district and the local public health agency, and shall be
46 approved by the chief executive officer of the county, if there be one,
47 or otherwise the governing board of the county, or the chief executive
48 of the city of New York or the mayor of the city of Staten Island, and
49 submitted to the director for approval by such date as may be specified
50 by regulation. The director shall not approve such county home care plan
51 for functionally impaired elderly unless it complies with the standards
52 and regulations issued pursuant to this section.

53 4. State aid. (a) County plans for improving the availability of
54 community services to the elderly:

55 (1) within the amounts appropriated therefor, counties with an
56 approved county plan shall be eligible for reimbursement of one hundred

1 percent of the annual approved expenditures for the preparation and
2 revision of such county plan, evaluation of projects contained within
3 such county plan, execution of interagency agreements necessary to carry
4 out the plan, actions to consolidate, combine or collocate services
5 within the county, and such other costs of the designated agency neces-
6 sary to implement such county plan, provided that the total annual
7 amount payable to a county pursuant to this subparagraph shall not
8 exceed the sum of one dollar for each elderly person residing in the
9 county, or seventy-five thousand dollars, whichever is less, and further
10 provided that for the city of New York or the city of Staten Island such
11 amount shall not exceed one dollar for each elderly person residing in
12 [~~the~~ such city or three hundred seventy-five thousand dollars, whichev-
13 er is less. Notwithstanding the foregoing limitations, counties with a
14 population of less than twenty thousand elderly persons shall be eligi-
15 ble for reimbursement of one hundred percent of such annual approved
16 expenditures provided that the total annual amount of such reimbursement
17 per county shall not exceed twenty thousand dollars.

18 (2) within the amounts appropriated therefor, a county may receive a
19 grant-in-aid of up to twenty-five per centum of the total annual amount
20 that such county is eligible to receive pursuant to subparagraph one of
21 this paragraph for the cost of preparing an initial county plan in
22 accordance with this section. Such a grant-in-aid shall be available to
23 a county only once and shall be in addition to the reimbursement
24 received by the county pursuant to subparagraph one of this paragraph
25 for the first program year. A request for such a grant-in-aid shall be
26 accompanied by a letter of intent in the form prescribed by the director
27 evidencing the commitment of the county to develop a county plan for
28 community services and shall be submitted to the director at least six
29 months prior to the beginning of the first program year.

30 (b) Community service projects:

31 (1) within the amounts appropriated therefor, counties having an
32 approved county plan shall be eligible for reimbursement by the state
33 for expenditures for approved community service projects pursuant to
34 this section. Such state reimbursement shall not exceed thirty-three
35 thousand six hundred dollars or four dollars twenty cents for each
36 elderly person residing in the county, whichever is greater. The annual
37 state reimbursement eligibility shall be at a rate of seventy-five
38 percent of the total annual expenditures for such approved programs.

39 (2) the director shall provide by regulation that certain non-county
40 moneys and in-kind equivalents may be used to comprise the county share
41 of such total annual approved expenditures, provided that such county
42 share shall not include cost-sharing received from elderly persons
43 receiving expanded non-medical in-home services, non-institutional
44 respite services, case management services, and ancillary services
45 pursuant to paragraph (k) of this subdivision or moneys received from
46 the federal government for services for the elderly allocated to the
47 states or local governments according to population or other such non-
48 competitive basis.

49 (3) the director shall provide by regulation the requirements for any
50 participant contributions and fee schedules used for community service
51 projects and the manner for the accounting and use of any such revenue.

52 (c) Reimbursement pursuant to this section shall not be available for
53 expenditures for base year services otherwise provided without cost, or
54 to replace base year expenditures made by the county or any other
55 service provider irrespective of the source of funds for such services.

1 (d) Reimbursement shall not be available to community services
2 projects funded pursuant to paragraph (b) of this subdivision or to
3 expanded non-medical in-home services, non-institutional respite
4 services, case management services, and ancillary services funded pursu-
5 ant to paragraph (j) of this subdivision for services provided to elder-
6 ly persons who are eligible for or are receiving services to meet their
7 needs pursuant to titles eighteen, nineteen or twenty of the federal
8 social security act or any other governmental programs or for services
9 provided to residents in adult residential care facilities which had
10 previously been provided by the facility or which are required by law to
11 be provided by such facility.

12 (e) For the purpose of determining the amount of state reimbursement
13 for which a county is eligible pursuant to this section, the last
14 preceding federal census or other census data approved by the comp-
15 troller shall be used. Funds appropriated by the state for the purpose
16 of reimbursement for community services pursuant to this section shall
17 be apportioned among the counties pursuant to the formula set forth in
18 paragraph (b) of this subdivision by the director. Funds appropriated by
19 the state for the purpose of reimbursement for expanded non-medical
20 in-home services, non-institutional respite services, case management
21 services, and ancillary services pursuant to this section shall be
22 apportioned among the counties by the director pursuant to the formula
23 set forth in paragraph (j) of this subdivision.

24 (f) The comptroller may withhold the payment of state aid to any coun-
25 ty in the event that such county alters or discontinues the operations
26 approved by the director pursuant to this section or otherwise fails to
27 comply with the regulations or requirements of the director.

28 (g) Counties shall submit claims for reimbursement after the end of
29 each month or each quarter as required by and in accordance with proce-
30 dures prescribed by the director. Reimbursement shall be available for
31 approved expenditures incurred in accordance with an approved county
32 plan for community services.

33 (h) Reimbursement pursuant to subparagraph one of paragraph (b) or
34 paragraph (j) of this subdivision shall not be available for expendi-
35 tures for community or expanded non-medical in-home services, non-insti-
36 tutional respite services, case management services, and ancillary
37 services to elderly persons in the city of New York and in the city of
38 Staten Island unless expenditures for such services are apportioned for
39 services in each of the counties contained within such city in a manner
40 which the director has determined by regulation substantially reflects
41 the proportion that the number of elderly persons in that county bears
42 to the total number of elderly persons in [~~the~~ such city as a whole. In
43 determining whether reimbursement shall be available under paragraph (g)
44 of this subdivision, the director shall ensure that expenditures were
45 apportioned in accordance with the provisions of this paragraph.

46 (i) The director, within the amounts appropriated therefor and with
47 the approval of the director of the budget, may authorize a county which
48 has an approved home care plan for functionally impaired elderly to
49 provide expanded non-medical in-home services, non-institutional respite
50 services, case management services, and ancillary services pursuant to
51 such plan. Such services shall be limited to those services necessary to
52 meet otherwise unmet needs and which support such elderly persons'
53 continued residence in their homes. Needs will be determined pursuant to
54 a standardized evaluation of functional impairment, available resources
55 and such other relevant factors specified pursuant to regulations
56 promulgated by the director. No expanded non-medical in-home services,

1 non-institutional respite services, or ancillary services shall be
2 provided to any individual pursuant to this section unless such expanded
3 non-medical in-home services, non-institutional respite services, or
4 ancillary services are accompanied by ongoing case management services
5 in accordance with regulations promulgated by the director.

6 (j) Within the amounts appropriated therefor, counties authorized to
7 provide expanded non-medical in-home services, non-institutional respite
8 services, case management services, and ancillary services pursuant to
9 paragraph (i) of this subdivision shall be eligible for reimbursement by
10 the state of up to seventy-five percent of allowable expenditures for
11 approved services pursuant to this section up to the level authorized by
12 the director. The director shall not authorize a level of state
13 reimbursement pursuant to this paragraph which exceeds the sum of nine-
14 ty-one thousand two hundred fifty dollars or seven dollars thirty cents
15 for each elderly person residing in the county, whichever is greater,
16 and shall proportionately reduce such sum for each county in any years
17 for which appropriations are not sufficient to fully fund approved
18 expanded non-medical in-home services, non-institutional respite
19 services, case management services, and ancillary services for func-
20 tionally impaired elderly in all counties with approved home care plans;
21 provided however that in state fiscal years beginning on or after the
22 first day of April, two thousand five, the director, with the approval
23 of the director of the budget, may authorize state reimbursement in
24 excess of these levels to the extent appropriations are available there-
25 for.

26 (k) The director, with the approval of the director of the budget,
27 shall provide by regulation the extent of cost-sharing to be required of
28 elderly persons receiving expanded non-medical in-home services, non-in-
29 stitutional respite services, case management services, and ancillary
30 services pursuant to this section, which shall reflect such recipients'
31 means to pay for such services and which will not affect their ability
32 to remain in their homes; provided however that the director shall not
33 authorize or direct the withholding of state aid pursuant to paragraph
34 (f) of this subdivision prior to the first day of April, two thousand
35 five, based on any county's failure or inability to comply with regu-
36 lations promulgated pursuant to this paragraph. The full amount of cost-
37 sharing actually received by any county from elderly persons receiving
38 expanded non-medical in-home services, non-institutional respite
39 services, case management services, and ancillary services shall be used
40 by such county to expand either such county's program of community
41 services or such county's program of expanded non-medical in-home
42 services, non-institutional respite services, case management services,
43 and ancillary services pursuant to this section.

44 (l) Reimbursement pursuant to paragraph (j) of this subdivision shall
45 not be available for expenditures for base year services otherwise
46 provided without cost, or to replace base year expenditures made by the
47 county or any other service provider irrespective of the source of
48 funds, or to replace community services expenditures pursuant to para-
49 graph (b) of this subdivision.

50 (m) Counties shall submit claims for reimbursement for expanded
51 in-home services, non-institutional respite services, case management
52 services, and ancillary services to functionally impaired elderly as
53 required by and in accordance with procedures prescribed by the direc-
54 tor. Reimbursement shall be available for approved expenditures
55 incurred in accordance with an approved county home care plan for func-
56 tionally impaired elderly to the extent the director has authorized

1 state aid for such services pursuant to paragraph (i) of this subdivi-
2 sion.

3 (n) The director shall provide by regulation that certain non-county
4 moneys and in-kind equivalents may be used in part to compose the county
5 share of total allowable expenditures pursuant to paragraph (j) of this
6 subdivision, provided that such county share shall not include cost-
7 sharing received from elderly persons receiving expanded non-medical
8 in-home services, non-institutional respite services, case management
9 services, and ancillary services pursuant to paragraph (k) of this
10 subdivision or moneys received from the federal government for services
11 for the elderly allocated to the states or local governments according
12 to population or other such non-competitive basis.

13 § 8-013. Subdivision 9 of section 140 of the executive law, as amended
14 by chapter 861 of the laws of 1960, is amended to read as follows:

15 9. The clerks of the counties of New York, Kings, Queens, Richmond
16 and Bronx shall each keep a book or card index file in which shall be
17 registered the signature of the commissioners so filing such certif-
18 icates; and the county clerk of any county in the city with whom such
19 commissioner has filed a certificate of appointment shall, upon demand
20 and upon payment of the sum of fifty cents, authenticate a certificate
21 of acknowledgment or proof of oath taken before such commissioner of
22 deeds, without regard to the county in the city in which such [~~acknowledg-~~
23 ~~ment~~] acknowledgment or proof was taken or oath administered, by
24 subjoining or attaching to the original certificate of acknowledgment or
25 proof or oath a certificate under [~~his~~] such clerk's hand and official
26 seal specifying that at the time of taking the acknowledgment or proof
27 or oath the officer taking it was duly authorized to take the same; that
28 the authenticating officer is acquainted with the former's handwriting,
29 or has compared the signature on the certificate of acknowledgment,
30 proof or oath with the autograph signature deposited in [~~his~~] such
31 clerk's office by such officer, and that [~~he~~] they verily believes the
32 signature is genuine.

33 § 8-014. Any person who resides in or maintains an office or other
34 place of business in the city of Staten Island and who resides in the
35 county of Richmond on the date of establishment of the city of Staten
36 Island who holds an appointment as a commissioner of deeds from the
37 preceding municipality shall be deemed to hold the appointment as
38 commissioner of deeds from the common council of the city of Staten
39 Island in accordance with the provisions of section 139 of the executive
40 law. Such person shall continue to hold such office until such person's
41 original appointment expires or is revoked pursuant to law.

42 § 8-015. Section 56 of the social services law, as amended by chapter
43 863 of the laws of 1977, is amended to read as follows:

44 § 56. City social services districts. The city of New York and the
45 city of Staten Island shall have all the powers and duties of a social
46 services district insofar as consistent with the provisions of the
47 special and local laws relating to such [~~city~~] cities. The officers
48 thereof charged with the administration of public assistance and care
49 shall have additional powers and duties of a commissioner of social
50 services not inconsistent with the laws relating to said [~~city~~] cities.

51 § 8-016. Section 57 of the social services law, as amended by chapter
52 863 of the laws of 1977, is amended to read as follows:

53 § 57. Cities in county social services districts. Each city, other
54 than the city of New York and the city of Staten Island, shall form part
55 of the county social services district of the county in which it is
56 situated and shall not assume any powers and responsibilities for the

1 administration or expense of public assistance and care, in addition to
2 those specified in subdivision two of section sixty-nine, except pursu-
3 ant to the provisions of sections seventy-four and seventy-four-a of
4 this chapter.

5 § 8-017. Section 61 of the social services law is amended by adding a
6 new subdivision 1-a to read as follows:

7 1-a. The city of Staten Island is hereby constituted a city social
8 services district.

9 § 8-018. Subdivision 1 of section 74 of the social services law, as
10 added by chapter 863 of the laws of 1977, is amended to read as follows:

11 1. Each city, other than the city of New York and the city of Staten
12 Island, which is responsible for one or more types of public assistance
13 and care on the date this section becomes effective shall function under
14 section seventy-four-a of this chapter.

15 § 8-019. Section 86-a of the social services law, as amended by chap-
16 ter 655 of the laws of 1978, is amended to read as follows:

17 § 86-a. City public welfare funds. The taxes levied for public
18 assistance and care in a city, or in a city public welfare district,
19 shall be paid to the city treasurer, [~~or~~] the commissioner of finance in
20 the city of New York or the comptroller in the city of Staten Island,
21 and disbursed in accordance with the provisions of law relating to such
22 city for the payment of bills and claims, provided such provisions of
23 law are not inconsistent with the provisions of this chapter.

24 § 8-020. Intentionally omitted.

25 § 8-021. Subdivision 2 of section 209 of the social services law, as
26 amended by chapter 71 of the laws of 1983, paragraphs (a), (b), (c),
27 (d), (e) and (f) as amended by section 2 of part R of chapter 56 of the
28 laws of 2025, is amended to read as follows:

29 2. The following amounts shall be the standard of monthly need for
30 determining eligibility for and the amount of additional state payments,
31 depending on the type of living arrangement and the geographic area in
32 which the eligible individual or the eligible couple resides:

33 (a) On and after January first, two thousand twenty-five, for an
34 eligible individual living alone, \$1,054.00; and for an eligible couple
35 living alone, \$1,554.00.

36 (b) On and after January first, two thousand twenty-five, for an
37 eligible individual living with others with or without in-kind income,
38 \$990.00; and for an eligible couple living with others with or without
39 in-kind income, \$1,496.00.

40 (c) On and after January first, two thousand twenty-five, (i) for an
41 eligible individual receiving family care, \$1,233.48 if such individual
42 is receiving such care in the city of New York, the city of Staten
43 Island or the county of Nassau, Suffolk, Westchester or Rockland; and
44 (ii) for an eligible couple receiving family care in the city of New
45 York, the city of Staten Island or the county of Nassau, Suffolk, West-
46 chester or Rockland, two times the amount set forth in subparagraph (i)
47 of this paragraph; or (iii) for an eligible individual receiving such
48 care in any other county in the state, \$1,195.48; and (iv) for an eligi-
49 ble couple receiving such care in any other county in the state, two
50 times the amount set forth in subparagraph (iii) of this paragraph.

51 (d) On and after January first, two thousand twenty-five, (i) for an
52 eligible individual receiving residential care, \$1,402.00 if such indi-
53 vidual is receiving such care in the city of New York, the city of
54 Staten Island or the county of Nassau, Suffolk, Westchester or Rockland;
55 and (ii) for an eligible couple receiving residential care in the city
56 of New York, the city of Staten Island or the county of Nassau, Suffolk,

1 Westchester or Rockland, two times the amount set forth in subparagraph
2 (i) of this paragraph; or (iii) for an eligible individual receiving
3 such care in any other county in the state, \$1,372.00; and (iv) for an
4 eligible couple receiving such care in any other county in the state,
5 two times the amount set forth in subparagraph (iii) of this paragraph.

6 (e) On and after January first, two thousand twenty-five, (i) for an
7 eligible individual receiving enhanced residential care, \$1,661.00; and
8 (ii) for an eligible couple receiving enhanced residential care, two
9 times the amount set forth in subparagraph (i) of this paragraph.

10 (f) The amounts set forth in paragraphs (a) through (e) of this subdi-
11 vision shall be increased to reflect any increases in federal supple-
12 mental security income benefits for individuals or couples which become
13 effective on or after January first, two thousand twenty-six but prior
14 to June thirtieth, two thousand twenty-six.

15 § 8-022. Subdivision 1 of section 368-e of the social services law, as
16 amended by section 55 of part B of chapter 58 of the laws of 2009, is
17 amended to read as follows:

18 1. The department of health shall review claims for expenditures made
19 by counties, the city of Staten Island and the city of New York for
20 medical care, services and supplies which are furnished to preschool
21 children with handicapping conditions or such preschool children
22 suspected of having handicapping conditions, as such children are
23 defined in the education law. If approved by the department, payment for
24 such medical care, services and supplies which would otherwise qualify
25 for reimbursement under this title and which are furnished in accordance
26 with this title and the regulations of the department to such children,
27 shall be made in accordance with the department's approved medical
28 assistance fee schedules by payment to such county or [~~city~~] cities
29 which furnished the care, services or supplies either directly or by
30 contract. Notwithstanding any provisions of law, rule or regulation to
31 the contrary, any clinic or diagnostic and treatment center licensed
32 under article twenty-eight of the public health law, which as determined
33 by the state education department, in conjunction with the department of
34 health, has a less than arms length relationship with the provider
35 approved under section forty-four hundred ten of the education law
36 shall, subject to the approval of the department and based on standards
37 developed by the department, be authorized to directly submit such
38 claims for medical assistance, services or supplies so furnished for any
39 period beginning on or after July first, nineteen hundred ninety-seven.
40 The actual full cost of the individualized education program (IEP)
41 related services incurred by the clinic shall be reported on the New
42 York State Consolidated Fiscal Report in the education law section
43 forty-four hundred ten program cost center in which the student is
44 placed and the associated medical assistance revenue shall be reported
45 in the same manner.

46 § 8-023. Subdivision 13 of section 390 of the social services law, as
47 amended by chapter 160 of the laws of 2003, is amended to read as
48 follows:

49 13. Notwithstanding any other provision of law, this section [~~, except~~
50 ~~for paragraph (a-1) of subdivision two-a of this section,~~] shall not
51 apply to child day care centers in the city of New York or in the city
52 of Staten Island.

53 § 9-001. Subdivision 1 of section 214 of the county law, as amended by
54 chapter 967 of the laws of 1973, is amended to read as follows:

55 1. Concurrent resolutions, election notices and official canvass.
56 The members of the county legislative body, whether such body be denomi-

1 nated board of supervisors, county legislature or otherwise, or, in the
2 [~~city~~] cities of New York and Staten Island, of the council of each such
3 city representing respectively each of the two principal political
4 parties into which the people of the state are divided, shall designate
5 annually the newspaper published within the county to publish the
6 concurrent resolutions of the legislature. Such designation shall be in
7 writing and signed by a majority of the members representing each of
8 said political parties. In making such designation, consideration shall
9 be given to the newspapers advocating the principles of such political
10 party, the support of its nominees and the extent of the circulation in
11 the county. However the fact that a newspaper is an independent newspa-
12 per not advocating the principles of any political party shall not
13 disqualify it from consideration. If there be but one newspaper
14 published in the county, such newspaper shall be designated. The desig-
15 nation shall be filed with the clerk of the county legislative body or,
16 in the [~~city~~] cities of New York and Staten Island, with the clerk of
17 the council of each such city, who shall not later than January tenth
18 cause notice of the name and address of such newspaper or newspapers to
19 be forwarded to the secretary of state. In like manner the members of
20 the county legislative body or, in the [~~city~~] cities of New York and
21 Staten Island, of the council of each such city representing each of the
22 two principal political parties into which the people of the state are
23 divided, shall designate the newspaper published within the county to
24 publish the election notices issued by the secretary of state and the
25 newspaper to publish the official canvass. In the event of a failure so
26 to designate in any year, or if either of such political parties has no
27 representatives among the body or, in the [~~city~~] cities of New York and
28 Staten Island, council membership, the last newspaper designated by the
29 members of such party shall be deemed duly designated.

30 § 9-002. Section 226-a of the county law, as added by chapter 80 of
31 the laws of 1969, is amended to read as follows:

32 § 226-a. Patriotic observances. The county legislature and/or board
33 of supervisors, as the case may be, of any county or borough outside the
34 city of New York or the city of Staten Island, is hereby authorized to
35 appropriate and set aside each year such sums it may deem proper for the
36 purpose of providing for the due and proper observance of any legal
37 holiday, including Columbus day.

38 § 9-003. Section 361-a of the county law, as amended by chapter 359 of
39 the laws of 1989, is amended to read as follows:

40 § 361-a. Expenses of boards of elections outside New York City and the
41 city of Staten Island; apportionment of. The board of elections in each
42 county, outside of the [~~city~~] cities of New York and Staten Island, on
43 or before the fifteenth day of December and not earlier than the first
44 day of October, in each year, shall certify to the clerk of the legisla-
45 tive body of the county, the total amount of the expenses of such board
46 of elections, including salaries for the preceding year, and, if the
47 legislative body of any county shall so direct, shall certify to such
48 clerk the portions of such expenses which under provisions of law are to
49 be borne by any city or cities in said county and the portion thereof
50 which is to be borne by the rest of such county and such clerk shall
51 thereupon notify the proper local official or officials, who, in spread-
52 ing upon the assessment-rolls the taxes to be levied upon the taxable
53 property in the city or any such cities, and in the rest of the county,
54 shall include in the amount so spread the amounts certified by the board
55 of elections to be borne by such city or cities, respectively, and in
56 the amount spread upon the assessment-rolls of the taxable property in

1 the several towns or other political subdivisions of the rest of the
2 county the amount so certified by said board of elections to be borne by
3 such towns or political subdivisions respectively. Whenever any addi-
4 tional expenses either for salaries or supplies in addition to the regul-
5 ar county-wide primary and election expenses are incurred by a board of
6 elections incidental to any election in any city, town or village, such
7 board of elections shall certify to the county legislative body a
8 detailed statement of such expenses and said county legislative body may
9 cause the amount thereof to be levied against such city, town or village
10 or may certify the amount thereof to such city, town or village and such
11 city, town or village shall upon such certification, include the amount
12 so certified in the next budget and tax levy and shall pay the same to
13 the county.

14 § 9-004. Subdivision 2 of section 390 of the county law, as added by
15 chapter 1 of the laws of 1951, is amended to read as follows:

16 2. Whenever a patient admitted to said hospital has local residence,
17 as defined in the public health law, in the county in which the hospital
18 is situated, [~~he~~] such patient shall be a charge upon such county. If
19 such patient admitted to said hospital has local residence in some other
20 county or in the city of New York or the city of Staten Island, [~~he~~]
21 such patient shall be a charge upon such other county or the city of New
22 York or the city of Staten Island, as the case may be, and the super-
23 intendent shall send a bill for such charge to the clerk of the board of
24 supervisors of such other county or to the comptroller of the city of
25 New York or of the city of Staten Island. Such charge shall be at a
26 rate to be fixed by the board of managers, which shall not exceed the
27 per diem per capita cost of care and treatment in said hospital, and if
28 the county operating said hospital is currently receiving state aid for
29 the care and treatment of tuberculosis patients pursuant to the public
30 health law, such charge may be an amount for each day of such patient's
31 care equivalent to the balance of the total per diem per capita cost of
32 operating such hospital during the preceding fiscal year, as computed
33 and approved by the state commissioner of health [~~pursuant to subdivi-~~
34 ~~sion three of section fifty-four of the public health law~~]. Such bill
35 shall be audited and paid by the board of supervisors of said county,
36 except that a bill so submitted to the city of New York or the city of
37 Staten Island shall be paid by such city after audit and upon warrant of
38 the comptroller of such city. Any patient admitted to said hospital may
39 pay for [~~his~~] their care and treatment in whole or in part if [~~he~~] such
40 patient volunteers to do so.

41 § 9-005. Section 391 of the county law, as added by chapter 1 of the
42 laws of 1951, is amended to read as follows:

43 § 391. Admission of out of county patients. 1. Exclusive of the
44 city of New York and the city of Staten Island, and exclusive of coun-
45 ties served by state tuberculosis hospitals, any person in a county not
46 having a county hospital for the care and treatment of persons suffering
47 from tuberculosis may apply in person to the clerk of the board of
48 supervisors of such county or to the state commissioner of health for
49 admission to a tuberculosis hospital, providing that such person submit
50 with such application a statement signed by a reputable physician that
51 such physician has, within the ten days preceding the date of such
52 application, examined such person and that, in [~~his~~] such physician's
53 opinion, such person is suffering from tuberculosis or is suspected of
54 having tuberculosis and is in need of care and treatment therefor. Upon
55 receipt of such application, the clerk of the board of supervisors or
56 the state commissioner of health, as the case may be, shall forward the

1 same to the superintendent of any state, county or city hospital for the
2 care and treatment of tuberculosis.

3 2. Whenever the superintendent of such a hospital shall receive an
4 application for the admission of a patient in accordance with the
5 provisions of subdivision one of this section, if it appear from such
6 application that the person therein referred to is suffering from tuber-
7 culosis or is suspected of having tuberculosis and is in need of care
8 and treatment therefor, the superintendent shall notify said person to
9 appear in person at the hospital, provided there be a vacancy in such
10 hospital and there be no pending application from a patient living in
11 the county in which the hospital is located. If, upon personal examina-
12 tion of the patient, the superintendent is satisfied that such patient
13 is in need of care and treatment for tuberculosis, [~~he~~] such superinten-
14 dent shall admit [~~him~~] such patient to the hospital. Every patient so
15 admitted shall be a charge against the county in which [~~he~~] such patient
16 was living immediately prior to such admission. Such charge shall be at
17 a rate to be fixed by the board of managers, which shall not exceed the
18 per diem per capita cost of maintenance therein and any cost of trans-
19 portation to or from the hospital, except that if the county operating
20 said hospital is currently receiving state aid for the care and treat-
21 ment of tuberculosis patients pursuant to the public health law, such
22 charge shall be an amount for each day of such patient's care equivalent
23 to the balance of the total per diem per capita cost of operating such
24 hospital during the preceding fiscal year, as computed and approved by
25 the state commissioner of health [~~pursuant to subdivision three of~~
26 ~~section fifty four of the public health law~~]; and the bill therefor
27 shall be audited and paid by the board of supervisors of the said coun-
28 ty. However, if such patient has local residence, as defined in the
29 public health law, in some county other than the one in which [~~he~~] such
30 patient was living immediately prior to such admission or in the city of
31 New York or the city of Staten Island, [~~he~~] such patient shall be a
32 charge upon such other county or the city of New York or the city of
33 Staten Island, as the case may be, and in this event any amounts for the
34 cost of such care and treatment which shall have been paid by the county
35 from which [~~he~~] such patient was admitted shall be charged back and
36 reimbursed to such county by the aforesaid other county or the city of
37 New York or the city of Staten Island in which the patient has local
38 residence. Any patient admitted to a hospital in accordance with the
39 provisions of subdivision one of this section may pay for [~~his~~] their
40 care and treatment in whole or in part if [~~he~~] such patient volunteers
41 to do so.

42 § 9-006. Section 901 of the county law is amended by adding a new
43 subdivision 1-a to read as follows:

44 1-a. The commissioner of corrections of the city of Staten Island
45 shall have custody of the civil jails and persons lawfully committed to
46 such commissioner's custody and such jails shall be kept by them, or by
47 keepers appointed by such commissioner, for whose acts they shall be
48 responsible.

49 § 9-007. Subdivision 1 of section 902 of the county law, as amended by
50 chapter 950 of the laws of 1956, is amended to read as follows:

51 1. The offices of the county clerk in the counties constituting the
52 city of New York and the office of the Richmond county clerk shall
53 remain open for the transaction of business from nine o'clock in the
54 forenoon to four o'clock in the afternoon every day except Saturdays,
55 Sundays and holidays and except in the months of July and August when
56 said offices shall remain open for the transaction of business from nine

1 o'clock in the forenoon to two o'clock in the afternoon except Satur-
2 days, Sundays and holidays.

3 § 9-008. Section 904 of the county law, as amended by chapter 655 of
4 the laws of 1978, is amended to read as follows:

5 § 904. Court and trust fund register and liability of officers. The
6 county clerks of the counties comprising the city of New York and the
7 Richmond county clerk shall perform the same duties and shall be subject
8 to the same penalties imposed by the provisions of this chapter upon
9 other county clerks of the state with relation to court and trust fund
10 registers and the delivery of property or moneys to the commissioner of
11 finance in pursuance of any judgment, decree or order of a court of
12 record of this state.

13 § 9-009. The county law is amended by adding a new section 905-a to
14 read as follows:

15 § 905-a. Liability for loss of court and trust funds in the city of
16 Staten Island. The officer responsible for collection and management of
17 public funds for the city of Staten Island and such officer's surety or
18 sureties shall be liable in the same manner as county treasurers are
19 made liable under the provisions of this chapter for the loss of court
20 and trust funds.

21 § 9-010. The county law is amended by adding a new section 906-a to
22 read as follows:

23 § 906-a. Liability of city of Staten Island for loss of court and
24 trust funds. The city of Staten Island shall be responsible for all
25 property or moneys deposited with the officer responsible for collection
26 and management of public funds for the city of Staten Island by virtue
27 of any judgment, decree or order of a court of record in this state
28 provided, however, that the city shall not be held liable for any loss
29 due to the depreciated value of an investment legal at the time of its
30 purchase and which continued to be a legal investment during the period
31 of the trust. An action to recover any loss to or of such fund may be
32 brought against the city by any party aggrieved or by the state comp-
33 troller in a court of competent jurisdiction.

34 § 9-011. The county law is amended by adding a new section 931-a to
35 read as follows:

36 § 931-a. Employees of the district attorney of the county of Rich-
37 mond. The district attorney of Richmond county is vested with the power
38 to appoint any person to any position for which there is now provision
39 by appropriation or which shall hereafter be established. All positions
40 in the district attorney's office of Richmond county for which there is
41 now provision by appropriation shall be continued, except that the mayor
42 of the city of Staten Island may with the consent of the district attor-
43 ney increase or decrease the number of positions and the term, grade,
44 salary and compensation of any position.

45 § 9-012. The county law is amended by adding a new section 944 to read
46 as follows:

47 § 944. Applicability of article to the county of Richmond. For the
48 purposes of continuing the application of this article within the city
49 of Staten Island on and after the date of establishment of the city of
50 Staten Island, the county of Richmond shall be deemed to continue as a
51 county within the city of New York for the purposes of exercising those
52 powers and duties devolved upon said county of Richmond pursuant to this
53 article.

54 § 9-013. Subdivision 2 and paragraphs (a) and (c) of subdivision 3 of
55 section 9-124 of the election law, subdivision 2 as amended by chapter
56 437 of the laws of 2019, paragraphs (a) and (c) of subdivision 3 as

1 amended by chapter 481 of the laws of 2023, are amended to read as
2 follows:

3 2. Each box, envelope, or container containing the ballots and stubs,
4 if any, and all items described in subdivision one of this section shall
5 be deposited by an inspector designated for that purpose with the offi-
6 cer or board from whom or which the board of inspectors received it. In
7 the city of New York and the city of Staten Island, every such box,
8 envelope, or container shall be delivered at the polling place to police
9 or peace officers designated by the police commissioner of such [~~city~~]
10 cities, who shall deposit them with the appropriate board of elections.

11 (a) Except in the city of New York or the city of Staten Island, the
12 registration poll records or computer generated registration lists, the
13 returns of canvass with results tapes and tally sheets, if any, annexed,
14 the voted ballots, stubs, opened packages of unused ballots and ballot
15 envelopes, any early mail, absentee, military, special federal, or
16 special presidential ballots which may have been delivered to the poll
17 site during election day, the challenge report records, keys and the
18 package of protested and void ballots shall be filed with the appropri-
19 ate board of elections.

20 (c) In the city of New York and the city of Staten Island, the board
21 of inspectors shall deliver to police or peace officers designated by
22 the police commissioner of such [~~city~~] cities, at the polling place the
23 registration poll records or computer generated registration lists,
24 challenge report, records, keys, other election supplies, including two
25 copies of the returns of the canvass and any early mail, absentee, mili-
26 tary, special federal, or special presidential ballots which may have
27 been delivered to the poll site during election day, voted ballots,
28 stubs, open packages of unused ballots and ballot envelopes. Such police
29 or peace officers shall file the returns, the package of void and
30 protested ballots, if any, and the early mail, absentee, military,
31 special federal, or special presidential ballots which may have been
32 delivered to the poll site during election day; and emergency ballots,
33 stubs and ballot envelopes, if any, within twenty-four hours after the
34 close of the polls, in the office of the appropriate board of elections
35 or its branch office within the borough, as the case may be.

36 § 9-014. Subdivision 3 of section 9-124 of the election law is amended
37 by adding a new paragraph (d) to read as follows:

38 (d) In the city of Staten Island the board of inspectors, shall deliv-
39 er to the police or peace officer at the polling place the registration
40 poll records or computer generated registration lists, challenge report,
41 records, keys, the flag, other election supplies, the returns of the
42 canvass and the absentee and military, special federal, special presi-
43 dential and emergency ballots, stubs and ballot envelopes. The police
44 or peace officer shall file the returns, the package of void, protested
45 and wholly blank ballots, if any, and the absentee and military, special
46 federal, special presidential and emergency ballots, stubs and ballot
47 envelopes, if any, within twenty-four hours after the close of the
48 polls, in the office of the board of elections.

49 § 9-015. Section 88-b of the state finance law, as added by chapter 13
50 of the laws of 1987, subdivisions 2 and 6 as amended by chapter 65 of
51 the laws of 1988, is amended to read as follows:

52 § 88-b. Suburban transportation fund. 1. There is hereby established
53 in the joint custody of the commissioner of taxation and finance and the
54 comptroller a fund to be known as the "suburban transportation fund".

55 2. The suburban transportation fund shall consist of moneys from the
56 commuter railroad account of the metropolitan transportation authority

1 special assistance fund required to be paid by such authority to the
2 suburban transportation fund pursuant to subdivision three of section
3 twelve hundred seventy-a of the public authorities law and any moneys
4 from the metropolitan transportation authority Dutchess, Orange and
5 Rockland fund transferred pursuant to subdivision four of section twelve
6 hundred seventy-a of the public authorities law.

7 3. Moneys in the suburban transportation fund shall be kept separate
8 from and shall not be commingled with any other moneys in the custody of
9 the commissioner of taxation and finance and the comptroller. All depos-
10 its of such money shall, if required by the comptroller, be secured by
11 obligations of the United States or of the state of market value equal
12 at all times to the amount of the deposit and all banks and trust compa-
13 nies are authorized to give such securities for such deposits.

14 4. Moneys of the fund shall be made available for financing any of the
15 following types of capital projects within the counties comprising the
16 metropolitan commuter transportation district, except those counties
17 comprising the city of New York or the city of Staten Island, but only
18 to the extent that such projects are on an adopted transportation plan
19 and approved by a designated transportation coordinating committee, if
20 one exists, or by the metropolitan planning organization as created
21 pursuant to section fifteen-a of the transportation law if no designated
22 transportation coordinating committee exists: capacity and infrastruc-
23 ture improvements to state, county, town, city, village roads, highways,
24 parkways and bridges; or state, county, town, city or village mass
25 transportation projects; provided, however, that in Nassau and Suffolk
26 counties such moneys shall be available only for capacity improvements
27 to state roads, highways, parkways and bridges. The amount of state
28 funds historically appropriated statewide, other than bond funds, for
29 transportation capital purposes from other sources shall not be reduced
30 because of the availability of such moneys made available pursuant to
31 this chapter, nor shall such moneys be used to match federal aid. Prior
32 to the allocation of state advance funds appropriated pursuant to this
33 section, the municipality responsible for the project shall certify to
34 the commissioner of transportation that the amount of funds appropriated
35 for transportation capital purposes by that municipality shall not be
36 reduced because of the availability of such state advance funds, and
37 that such moneys shall not be used to match federal aid.

38 The designated transportation coordinating committee, if one exists,
39 or the metropolitan planning organization if no designated transporta-
40 tion coordinating committee exists, shall notify the municipalities
41 within its jurisdiction of which projects it has approved.

42 5. In the event that any county withdraws from the metropolitan commu-
43 ter transportation district, the withdrawing county shall pay to the
44 state comptroller any amount that is required so that the state is fully
45 reimbursed for funds advanced in anticipation of reimbursement from the
46 suburban transportation fund. In the event that any withdrawing county
47 shall fail to make a payment pursuant to this subdivision, the state
48 comptroller shall withhold and pay to the capital projects fund an
49 amount equal to the amount owed from the next general or specific state
50 aid payment and scheduled to be paid to that county.

51 6. Moneys in the suburban transportation fund transferred pursuant to
52 section twelve hundred seventy-a of the public authorities law shall be
53 made available to the state department of transportation for capital
54 projects in the counties of Nassau, Suffolk, Westchester, Putnam, Dutch-
55 ess, Orange and Rockland on the basis of each county's average pro rata
56 share of the mortgage recording tax receipts raised in such counties

1 pursuant to subdivision one of section two hundred sixty-one of the tax
2 law during the period January first, nineteen hundred eighty-four
3 through December thirty-first, nineteen hundred eighty-six as certified
4 by the metropolitan transportation authority. Moneys transferred to the
5 suburban transportation fund at the request of Dutchess, Orange or Rock-
6 land county pursuant to subdivision three of section twelve hundred
7 seventy-b of the public authorities law shall be used by the state
8 department of transportation to increase the proportionate share of such
9 capital projects in such county. Such projects shall be financed by
10 means of a state advance to be reimbursed by the New York state thruway
11 authority, or its successor agency, through the issuance of its bonds or
12 notes in the manner set forth in subdivision seven of this section, or
13 by means of a state advance to be reimbursed directly from the suburban
14 transportation fund.

15 7. (a) For projects funded by the suburban transportation fund, the
16 state department of transportation may enter into an agreement with the
17 New York state thruway authority, or its successor agency, for the
18 purpose of having the thruway authority, or its successor agency, issue
19 bonds or notes to pay the capital costs of such project. Such agreement
20 shall be subject to approval by the director of the division of the
21 budget.

22 (b) For projects funded pursuant to this subdivision, the affected
23 municipality shall enter into an agreement with the department of trans-
24 portation for the conveyance of all affected real property including
25 highways, roads and bridges to the thruway authority, or its successor
26 agency, for the term of the bonds or notes issued by the thruway author-
27 ity, or its successor agency, for such project or for such lesser period
28 that such bonds or notes are outstanding. During the period of such
29 conveyance to the thruway authority, or its successor agency, the
30 department of transportation or the municipality shall agree to maintain
31 the facility in a state of good repair, the responsibility for which
32 shall be with the state, or municipality, which had jurisdiction over
33 said facility prior to such agreement.

34 (c) Upon the final retirement of all bonds and notes issued by the
35 thruway authority, or its successor agency, for such purpose, such prop-
36 erty shall automatically revert to the conveying entity.

37 8. Payments to the thruway authority, or its successor agency, pursu-
38 ant to this section shall be subject to appropriation from the suburban
39 transportation fund. The thruway authority, or its successor agency,
40 shall utilize such moneys to pay the debt service on such bonds or notes
41 and to meet administrative costs in connection therewith.

42 § 9-016. Section 2302 of the surrogate's court procedure act, as
43 amended by chapter 460 of the laws of 1999, is amended to read as
44 follows:

45 § 2302. Award of costs and allowances

46 1. Upon a motion the court may award costs to any party in such
47 amount as it determines not exceeding \$20 to each party, except in coun-
48 ties within the City of New York and in the city of Staten Island, where
49 such amount shall not exceed \$40.

50 2. Upon rendering a decree or in granting or denying an application
51 to vacate a decree the court may award as costs such sum as it deems
52 reasonable to the petitioner and to any other party who has succeeded in
53 whole or in part in a contest or whose attorney, in the absence of a
54 contest, has rendered services of substantial benefit to him, her or it,
55 or to the estate, not exceeding

1 (a) in counties within the City of New York and in the city of Staten
2 Island:

3 (i) \$100 where there has not been a contest, or
4 (ii) \$300 where there has been a contest and \$300 for each day, less
5 one, necessarily occupied in the trial or hearing and in addition \$100
6 for each day necessarily occupied in preparing therefore and \$100 addi-
7 tional if a motion for a new trial is granted.

8 (b) in all other counties:

9 (i) \$50 where there has not been a contest, or
10 (ii) \$150 where there has been a contest and \$150 for each day, less
11 one, necessarily occupied in the trial or hearing and in addition \$50
12 for each day necessarily occupied in preparing therefore and \$50 addi-
13 tional if a motion for a new trial is granted.

14 3. In a contested probate proceeding:

15 (a) Costs payable out of the estate or otherwise may be awarded (1) to
16 an unsuccessful contestant only if [~~he, she or it~~] such contestant be a
17 guardian ad litem or guardian, committee or conservator of a person
18 under disability; (2) to an unsuccessful proponent named as executor in
19 the will when propounded by [~~him, her or it~~] such proponent in good
20 faith as the last will of the decedent; and (3) to a person named as
21 executor in a prior will on file in the court that is not admitted to
22 probate when such person participates in the proceeding in good faith.
23 Such nominated executor, guardian ad litem, guardian, committee or
24 conservator, whether successful or not may be awarded costs and an
25 allowance in such sum as the court deems reasonable for [~~his, her or~~
26 ~~its~~] their counsel fees and other expenses incurred in the contest or
27 attempt to sustain the will. The court may direct that such costs and
28 allowances in whole or in part be payable by an unsuccessful contestant
29 except that an award of the successful proponent's counsel's fees may
30 only be allowed where the court finds that the contest was brought in
31 bad faith or was frivolous.

32 (b) Either before or after the decree granting probate the court may
33 order that a copy of the minutes of the trial be furnished to a contes-
34 tant for the purposes of appeal and charge the expense thereof initially
35 to the estate if satisfied that the contest is in good faith. If the
36 contestant be unsuccessful upon the appeal and [~~he, she or it~~] such
37 contestant is not the guardian of an infant, the committee of an incom-
38 petent, the conservator of a conservatee or a guardian ad litem [~~he, she~~
39 ~~or it~~] such contestant shall refund to the estate any amount so paid by
40 the estate for the minutes.

41 4. In a proceeding for probate of a will when the public administra-
42 tor or county treasurer has been directed to probate a will or continue
43 the proceedings for the probate thereof, the court may award to either
44 of them such sum as it deems reasonable for [~~his, her or its~~] their
45 counsel fees and other expenses necessarily incurred therein.

46 5. After appeal, pursuant to the direction of the appellate court the
47 court may award a fiduciary such sum as it deems reasonable for counsel
48 fees and other expenses necessarily incurred on the appeal.

49 6. In a proceeding to construe a will or after appeal in such a
50 proceeding, pursuant to the direction of the appellate court the court
51 may award to a fiduciary or any party to the proceeding such sum as it
52 deems reasonable for [~~his, her or its~~] their counsel fees and other
53 expenses necessarily incurred in the proceeding or on the appeal.

54 7. Upon a final or intermediate judicial settlement a fiduciary may
55 be awarded for [~~his, her or its~~] such fiduciary's expenses and counsel
56 fees such sum as the court deems reasonable not exceeding:

1 (a) within the counties of the City of New York and in the city of
2 Staten Island: \$100 for each day necessarily occupied in preparing the
3 account and in drawing, entering and executing the decree. Any sum so
4 awarded may be in addition to any costs, allowances or commissions
5 otherwise authorized and awarded by the court.

6 (b) in all other counties: \$ 50 for each day necessarily occupied in
7 preparing the account and in drawing, entering and executing the decree.
8 Any sum so awarded may be in addition to any costs, allowances or
9 commissions otherwise authorized and awarded by the court.

10 8. In a proceeding for disposition of real property a fiduciary may
11 be awarded out of the proceeds of sale [~~his, her or its~~] such
12 fiduciary's commissions and such sum as the court deems reasonable for
13 counsel fees and expenses necessarily incurred in the proceeding.

14 § 9-017. The general municipal law is amended by adding a new section
15 929 to read as follows:

16 § 929. City of Staten Island industrial development agency. (a)
17 Legislative intent. It is the policy and intent of the city of Staten
18 Island to promote the economic welfare of its inhabitants and to active-
19 ly promote, attract, encourage and develop economically sound commerce
20 and industry through governmental action for the purpose of preventing
21 unemployment and economic deterioration by the creation of a city of
22 Staten Island industrial development agency. It is recognized that the
23 viability and integrity of the residential communities in the city of
24 Staten Island should be protected and maintained so that no person be
25 deprived of their place of residence by any condemnation for economic or
26 industrial development undertaken pursuant to this article.

27 (b) For the purpose of this section "city" means the city of Staten
28 Island.

29 (c) For the benefit of the city and the inhabitants thereof an indus-
30 trial development agency, to be known as the city of Staten Island
31 industrial development agency, is hereby established for the accomplish-
32 ment of any or all of the purposes specified in title one of this arti-
33 cle, except that it shall not have the power to construct or rehabili-
34 tate any residential facility or housing of any nature and kind
35 whatsoever, nor shall it use any of its funds to further the
36 construction or rehabilitation of any residential facility or housing of
37 any nature and kind whatsoever. It shall constitute a body corporate
38 and politic, and be perpetual in duration. It shall only have the
39 powers and duties conferred by title one of this article upon industrial
40 development agencies as of January first, nineteen hundred seventy-three
41 except it shall not have the power of condemnation. In the exercise of
42 the powers conferred upon such agency with respect to the acquisition of
43 real property by this article such agency shall be limited to the
44 geographical jurisdictional limits of the city.

45 (d) It shall be organized in a manner prescribed by and be subject to
46 the provisions of title one of this article, except that its board shall
47 consist of ten members. Among its membership shall be the city comp-
48 troller, the city commissioner of economic development, the corporation
49 counsel of such city and the director of the city planning commission of
50 such city, each of whom shall have the power to designate an alternate
51 to represent them at board meetings with all the rights and powers,
52 including the right to vote, reserved to all board members, provided
53 that such designation be in writing to the chairperson of the board.
54 The remaining six members shall be appointed by the mayor of such city.

55 (e) The mayor shall designate the chairperson of the board, who shall
56 serve at the pleasure of the mayor.

1 (f) The terms of the directors first appointed by the mayor, other
2 than the chairperson of the board shall be as follows:

3 (1) two shall serve for terms of one year each;

4 (2) two shall serve for terms of two years each;

5 (3) two shall serve for terms of three years each, thereafter the
6 successors of all such directors shall serve for terms of three years
7 each. The mayor shall fill any vacancy which may occur by reason of
8 death, resignation, or otherwise in a manner consistent with the
9 original appointment. Members may be removed by the mayor for cause
10 after a hearing upon ten days' written notice. Such members shall
11 receive no compensation for their services but shall be entitled to the
12 necessary expenses, including traveling expenses, incurred in the
13 discharge of their duties.

14 (g) The chief executive officer of the agency shall be appointed by a
15 two-thirds vote of the board of directors.

16 (h) The agency, its members, officers, and employees, shall be
17 subject to article fourteen of the civil service law and for all such
18 purposes the agency shall be deemed the "public employer" and its
19 members, officers and employees shall be deemed "public employees".

20 (i) The city shall have the power to make, or contract to make grants
21 or loans including, but not limited to grants or loans of money, to the
22 agency in such amounts, upon such terms and conditions and for such
23 period or periods of time as in the judgment of the city and the agency
24 are necessary or appropriate for the accomplishment of any of the
25 purposes of the agency.

26 (j) The city shall have the power to condemn property for transfer to
27 the city of Staten Island industrial development agency under title one
28 of this article upon the request of two-thirds of the members of the
29 board of directors of the city of Staten Island industrial development
30 agency. No property shall be condemned on behalf of the agency which is
31 zoned "residential" as defined in the zoning resolution of the city, if
32 any, or which is occupied in whole or in part as a dwelling or resi-
33 dence.

34 (k) For the purpose of this section "governing body" as used in title
35 one of this article shall mean the mayor of the city. Except as other-
36 wise provided in this section, the agency, its members, officers and
37 employees, and its operations and activities shall be governed by the
38 provisions of title one of this article.

39 (l) The city shall save harmless and indemnify any person who is
40 serving or has served as a director or officer or as employee of the
41 city of Staten Island industrial development agency against any finan-
42 cial loss arising out of or in connection with any claim, demand, suit
43 or judgment, based on a cause of action involving allegations that pecu-
44 niary harm was sustained by any person as a result of any transaction,
45 act or omission to act of the city of Staten Island industrial develop-
46 ment agency or of any action or inaction or vote of any director, offi-
47 cer or employee of such agency unless such individual is found by a
48 final judicial determination not to have acted in good faith for a
49 purpose such individual reasonably believed to be in the best interests
50 of the agency or not to have had reasonable cause to believe that such
51 conduct was lawful. Provided, however, that such individual must trans-
52 mit to the corporation counsel of the city of Staten Island any notice
53 of claim, summons or complaint or other analogous paper served on such
54 individual within ten days of its receipt unless prevented from doing so
55 by compelling circumstances. The corporation counsel shall, without
56 charge, represent any such individual unless unable to do so by reason

1 of conflict of interest. In the event that the corporation counsel is
2 unable to give such representation, the city of Staten Island shall
3 indemnify the individual for any reasonable litigation expense incurred
4 by such individual.

5 § 10-001. Legislative findings. It is the intention of the legisla-
6 ture that the incorporation of the city of Staten Island shall not alter
7 the existing landlord-tenant relationships within such city and that the
8 state and local laws regulating landlord-tenant relationships such as
9 legal regulated rents, maximum rents and tenancy issues shall continue
10 to provide such regulation until superseded by state law or local law of
11 the city of Staten Island and in accordance with such intent, such laws
12 and regulations are hereby continued. It is further provided that all
13 real property tax exemptions provided under article 4 of the real prop-
14 erty tax law shall be continued as shall all rent regulations and other
15 regulations and duties imposed on the owners of property receiving
16 exemptions pursuant to such article until superseded by state law or
17 local law of the city of Staten Island.

18 § 10-002. Section 1 of chapter 21 of the laws of 1962, constituting
19 the local emergency housing rent control act, is amended by adding a new
20 subdivision 2-a to read as follows:

21 2-a. Applicability. For the purposes of this act, a city which is
22 incorporated on or after the first of January next succeeding the date
23 on which this subdivision shall have become a law and which is comprised
24 of a geographical area with respect to which provisions of this act were
25 in effect on the date immediately prior to such incorporation and which
26 city had been wholly contained within a city with a population of one
27 million or more shall continue to be treated as a city with a population
28 of one million or more.

29 § 10-003. Section 4 of section 4 of chapter 576 of the laws of 1974,
30 constituting the emergency tenant protection act of nineteen seventy-
31 four, is amended by adding a new subdivision f to read as follows:

32 f. In the city of Staten Island, the rent guidelines board shall be
33 the rent guidelines board established pursuant to the local law enacted
34 as a successor to the New York city rent stabilization law of nineteen
35 hundred sixty-nine and provided with such powers under such local law.

36 § 10-004. Subdivision b of section 14 of section 4 of chapter 576 of
37 the laws of 1974, constituting the emergency tenant protection act of
38 nineteen seventy-four, is relettered subdivision c and a new subdivision
39 b is added to read as follows:

40 b. in the city of Staten Island; provided that for the purposes of
41 this act, the city of Staten Island shall continue to be treated as a
42 city with a population of one million or more and the reference to any
43 local law applicable to the geographical area of such city prior to its
44 incorporation shall refer to the appropriate successor legislation
45 enacted by the city of Staten Island; and

46 § 10-005. The section heading and subdivision 8 of section 352-eeee of
47 the general business law, as amended by section 1 of part N of chapter
48 36 of the laws of 2019, are amended to read as follows:

49 Conversions to cooperative or condominium ownership in the city of New
50 York or in the city of Staten Island.

51 8. The provisions of this section shall only be applicable in the city
52 of New York and the city of Staten Island.

53 § 10-006. Section 467-b of the real property tax law is amended by
54 adding a new subdivision 14 to read as follows:

55 14. For the purposes of this section, the city of Staten Island shall
56 continue to be treated as a city with a population of one million or

1 more and any reference to a local law enacted pursuant to the local
2 emergency housing rent control act shall also refer to the successor
3 local law enacted by the city of Staten Island.

4 § 10-007. The real property tax law is amended by adding a new section
5 498 to read as follows:

6 § 498. City of Staten Island. For the purposes of this article, the
7 city of Staten Island shall continue to be treated as a city with a
8 population of one million or more and the reference to any local law
9 applicable to the geographical area of such city prior to its incorpo-
10 ration shall be deemed to refer to the appropriate successor legislation
11 enacted by the city of Staten Island.

12 § 10-008. Applicability. It is the intention of the legislature that
13 the state and local laws regulating landlord-tenant relationships such
14 as legal regulated rents, maximum rents and tenancy issues shall contin-
15 ue to provide such regulation; provided, however, that within one
16 hundred twenty days after the date of establishment of the city of
17 Staten Island, the common council of such city must make a determination
18 of whether or not a public emergency exists requiring the continuation
19 of such regulations.

20 § 11-001. Legislative findings. The legislature recognizes that the
21 formation of the city of Staten Island was not contemplated in the
22 establishment of the constitutional real property tax limitations. To
23 the greatest extent practicable, the establishment of the city of Staten
24 Island is formulated to preserve existing local laws, regulations and
25 instrumentalities of government to preserve the status quo and prevent a
26 disruption of government injurious to the public good.

27 The unique factor which determined the establishment of the constitu-
28 tional real property tax limits for the city of New York was the inclu-
29 sion of counties wholly within the city with the city assuming the
30 responsibilities and expenditures for functions normally exercised by
31 the counties in areas outside the city of New York. Staten Island will
32 now share this unique factor with New York city, as the county of Rich-
33 mond is wholly contained within the city of Staten Island.

34 Real property located in cities outside the city of New York is
35 subject to a real property tax limit of four percent, of which two
36 percent is city tax and two percent is county tax. Real property located
37 within New York city is subject to a more restrictive real property tax
38 limit of two and one-half percent, all of which is city tax. County real
39 property tax is not permitted within the city of New York.

40 The people of the city of Staten Island and county of Richmond and the
41 New York state legislature have adopted a charter for the city of Staten
42 Island which continues the New York city form of government placing
43 governmental responsibility on the city rather than the county. The
44 county of Richmond has not assumed new responsibilities justifying an
45 interpretation of the constitutional real property tax limits which
46 would permit the county of Richmond to impose a real property tax. Like-
47 wise the maintenance of the New York city form of government with the
48 usual county responsibilities being a function of city government when
49 combined with the prohibition of a county real property tax, requires an
50 interpretation providing a city real property tax limit of two and one-
51 half percent for the city of Staten Island.

52 Therefore the legislature finds and declares that the existing more
53 restrictive real property tax limits for real property located within
54 the county of Richmond remain in effect, providing a city real property
55 tax limit of two and one-half percent for the city of Staten Island and

1 prohibiting the imposition of a real property tax by the county of Rich-
2 mond.

3 § 12-001. Subdivision (a) of section 1107 of the tax law, as amended
4 by section 1 of part C of chapter 407 of the laws of 1999, is amended to
5 read as follows:

6 (a) General. On the first day of the first month following the month
7 in which a municipal assistance corporation is created under article ten
8 of the public authorities law for a city of one million or more, in
9 addition to the taxes imposed by sections eleven hundred five and eleven
10 hundred ten, there is hereby imposed on such date, within the territo-
11 rial limits of such city (including, in the case of the municipal
12 assistance corporation for the city of New York, the city of Staten
13 Island), and there shall be paid, additional taxes, at the rate of four
14 percent, which except as provided in subdivision (b) of this section,
15 shall be identical to the taxes imposed by sections eleven hundred five
16 and eleven hundred ten. Such sections and the other sections of this
17 article, including the definition and exemption provisions, shall apply
18 for purposes of the taxes imposed by this section in the same manner and
19 with the same force and effect as if the language of those sections had
20 been incorporated in full into this section and had expressly referred
21 to the taxes imposed by this section.

22 § 12-002. Subdivision (c) of section 1107 of the tax law, as amended
23 by chapter 588 of the laws of 2000, is amended to read as follows:

24 (c) Tax on sale of service of parking, garaging or storing of motor
25 vehicles. On the first day of the first month following the month in
26 which a municipal assistance corporation is created under article ten of
27 the public authorities law for a city of one million or more, in addi-
28 tion to the taxes imposed by sections eleven hundred five, eleven
29 hundred ten and subdivision (a) of this section, there is hereby imposed
30 on such date, within the territorial limits of such city (including, in
31 the case of the municipal assistance corporation for the city of New
32 York, the city of Staten Island), and there shall be paid, additional
33 taxes at the rate of six percent on receipts from every sale of the
34 service of providing parking, garaging or storing for motor vehicles by
35 persons operating a garage (other than a garage which is part of prem-
36 ises occupied solely as a private one or two family dwelling), parking
37 lot or other place of business engaged in providing parking, garaging or
38 storing of motor vehicles provided, however, that this subdivision shall
39 not apply to such facilities owned and operated by such city or an agen-
40 cy or instrumentality of such city or a public corporation the majority
41 of whose members are appointed by the chief executive officer of such
42 city or the legislative body of such city or both of them; provided,
43 however, that receipts for such services paid to a homeowner's associ-
44 ation by its members or receipts paid by members of a homeowner's asso-
45 ciation to a person leasing the parking facility from the homeowner's
46 association shall not be subject to the tax imposed by this subdivision.
47 For purposes of this subdivision, a homeowner's association is an asso-
48 ciation (including a cooperative housing or apartment corporation) (i)
49 the membership of which is comprised exclusively of owners or residents
50 of residential dwelling units, including owners of units in a condomin-
51 ium, and including shareholders in a cooperative housing or apartment
52 corporation, where such units are located in a defined geographical area
53 such as a housing development or subdivision; and (ii) which owns or
54 operates a garage, parking lot or other place of business engaged in
55 providing parking, garaging or storing for motor vehicles located in
56 such area for use (whether or not exclusive) by such owners or resi-

1 dents. All provisions set forth in this article applicable to the taxes
2 imposed under section eleven hundred five, including the definition and
3 exemption provisions of this article, shall apply with respect to a tax
4 imposed under this subdivision, except as to rate and except as other-
5 wise provided herein. The transitional provisions contained in section
6 eleven hundred six shall not apply to the taxes imposed by this section.

7 § 12-003. Intentionally omitted.

8 § 12-004. Section 1210 of the tax law is amended by adding two new
9 subdivisions (k) and (l) to read as follows:

10 (k) In the case of the municipal assistance corporation for the city
11 of New York the power of the city of Staten Island to adopt and amend
12 local laws, ordinances or resolutions imposing taxes pursuant to the
13 authority of such section shall, notwithstanding any provisions of arti-
14 cle twenty-nine of this chapter to the contrary, be suspended until all
15 the notes and bonds of such municipal assistance corporation shall have
16 been fully paid and discharged together with interest on unpaid install-
17 ments of interest.

18 (l) Notwithstanding the provisions of subdivision (k) of this section,
19 the city of Staten Island is hereby authorized and empowered to adopt
20 and amend local laws, imposing taxes, at a rate not to exceed two
21 percent on the receipts of sales from the services of laundering, dry-
22 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining,
23 and charges to a patron for admission to, or use of, facilities for
24 sporting activities in which the patron is to be a participant such as
25 bowling alleys and swimming pools. Such taxes shall be administered,
26 collected and distributed by the state tax commission as provided in
27 subpart B of part three and in part four of this article.

28 § 12-005. Subdivisions 3 and 4 of section 92-d of the state finance
29 law, subdivision 3 as amended by section 4 of part A of chapter 88 of
30 the laws of 2000 and subdivision 4 as amended by section 11 of part SS1
31 of chapter 57 of the laws of 2008, are amended to read as follows:

32 3. The taxes, interest and penalties imposed, pursuant to sections
33 eleven hundred seven or eleven hundred eight (as the case may be) of the
34 tax law within the territorial limits of a city in aid of which a munic-
35 ipal assistance corporation has been created (including, in the case of
36 the municipal assistance corporation for the city of New York, the city
37 of Staten Island), and received by the commissioner of taxation and
38 finance, after deducting the amount which the commissioner of taxation
39 and finance shall determine to be necessary for reasonable costs of the
40 commissioner of taxation and finance in administering, collecting and
41 distributing such taxes, shall be appropriated (i) to the municipal
42 assistance corporation which has been created in aid of such city in
43 order to enable such corporation to fulfill the terms of any agreements
44 made with the holders of its notes and bonds and to carry out its corpo-
45 rate purposes, including the maintenance of the capital reserve fund,
46 and (ii) the balance, if any, to the city in aid of which such corpo-
47 ration has been created, or to a public benefit corporation to which the
48 tax may be otherwise payable pursuant to law, as hereinafter provided.
49 Notwithstanding the provisions of this subdivision, in the case of the
50 municipal assistance corporation for the city of New York, such balance,
51 if any, shall be divided between the city of New York and the city of
52 Staten Island and paid, as hereinafter provided.

53 4. On or before the twelfth day of each month, the commissioner of
54 taxation and finance shall certify to the comptroller the amount of all
55 revenues so received during the prior month as a result of the taxes,
56 interest and penalties so imposed and in addition on or before the last

1 day of June the commissioner shall certify the amount of such revenues
2 received during and including the first twenty-five days of June. In
3 the case of the municipal assistance corporation for the city of New
4 York, the commissioner of taxation and finance shall certify separately
5 the amounts of such revenues received from within the territorial limits
6 of the city of New York and the territorial limits of the city of Staten
7 Island. The amount of revenues so certified shall be deposited by the
8 comptroller in the municipal assistance tax fund and the amount attrib-
9 utable to the taxes, interest and penalties imposed within the territo-
10 rial limits of a city in aid of which a municipal assistance corporation
11 has been created including, in the case of the municipal assistance
12 corporation for the city of New York, the city of Staten Island shall be
13 credited to a special account established in such fund for such corpo-
14 ration. Notwithstanding the foregoing provisions, the commissioner of
15 taxation and finance may prorate revenue attributable to the first or
16 last quarterly return period during which the taxes imposed by section
17 eleven hundred seven or eleven hundred eight (as the case may be) of the
18 tax law apply so as to separate from the revenue collected for that
19 quarter pursuant to such taxes the revenue collected pursuant to local
20 legislation adopted by a city pursuant to section twelve hundred ten or
21 twelve hundred twelve-A of the tax law. Such a proration by the commis-
22 sioner of taxation and finance shall be made on the basis of the ratio
23 of the number of months during which such taxes were imposed during such
24 quarterly return period to the total number of months in such quarterly
25 return period when such proration is reasonably necessary to ascertain
26 the amount of such money which must be deposited by the comptroller in
27 such special account and the amount of such money which must be deposit-
28 ed pursuant to section twelve hundred sixty-one of the tax law. The
29 commissioner of taxation and finance shall not be held liable for any
30 inaccuracy in any certification under this subdivision.

31 § 12-006. Subdivision 6 of section 92-d of the state finance law, as
32 amended by section 4 of part A of chapter 88 of the laws of 2000, is
33 amended to read as follows:

34 6. Upon receipt by the comptroller of a certificate or certificates
35 from the [~~chairman~~] chairperson of a municipal assistance corporation
36 that such corporation requires a payment or payments in order to comply
37 with any agreement with the holders of its notes and bonds and to carry
38 out its corporate purposes, including the maintenance of the capital
39 reserve fund, from the special account established for such corporation,
40 each of which certificates shall specify the required payment or
41 payments and the date when the payment or payments is required, the
42 comptroller shall pay from such special account on or before the speci-
43 fied date or within thirty days after such receipt, whichever is later,
44 to such corporation, as the [~~chairman~~] chairperson thereof may direct in
45 any such certificate, the amount or amounts so certified. In the case
46 of the municipal assistance corporation for the city of New York, each
47 amount so paid shall be comprised of revenues attributable to receipts
48 from both the city of New York and the city of Staten Island in the same
49 proportion that such revenues were received during the period covered by
50 each such certification. The [~~chairman~~] chairperson of such corporation
51 shall furnish the commissioner of taxation and finance with copies of
52 such certificates. The comptroller shall from time to time, but in no
53 event later than the fifteenth day of October, January and April and the
54 last day of June of each fiscal year, pay over and distribute to the
55 chief fiscal officer of the city in aid of which such municipal assist-
56 ance corporation has been created to be paid into the treasury of such

1 city to the credit of the general fund, or pay over and distribute to a
2 public benefit corporation to which the tax may otherwise be payable
3 pursuant to law, all revenues in the special account established for
4 such corporation in the municipal assistance tax fund, if any, in excess
5 of the aggregate amount which the [~~chairman~~] chairperson of such corpo-
6 ration has certified to the comptroller and which has been previously
7 appropriated and paid to such corporation as hereinabove authorized.

8 Notwithstanding the provisions of this subdivision, in the case of the
9 municipal assistance corporation for the city of New York, the comp-
10 troller shall from time to time, but in no event later than the
11 fifteenth of October, January, and April and the last day of June of
12 each fiscal year, (a) apportion between the city of New York and the
13 city of Staten Island the revenues, if any, in the special account
14 established for such corporation in the municipal assistance tax fund on
15 the basis of the locus of their receipt and (b) pay over and distribute
16 to the chief fiscal officers of such cities to pay into their respective
17 treasuries to the credit of the general fund all such respective reven-
18 ues in excess of the aggregate amount which the chairperson of such
19 corporation has certified to the comptroller and which has been previ-
20 ously appropriated and paid to such corporation as hereinabove author-
21 ized.

22 In no event shall the comptroller pay over and distribute any
23 revenues (other than the amount to be deducted for administering,
24 collecting and distributing such sales and compensating use taxes) to
25 any person other than the municipal assistance corporation unless and
26 until the aggregate of all payments certified to the comptroller as
27 required by such corporation as of such date in order to comply with its
28 agreements with the holders of its notes and bonds and to carry out its
29 corporate purposes, including the maintenance of the capital reserve
30 fund, which remain unappropriated or unpaid to such corporation shall
31 have been appropriated to such corporation and shall have been paid in
32 full; provided, however, that no person, including such corporation or
33 the holders of its notes or bonds shall have any lien on such revenues
34 and such agreement shall be executory only to the extent of such reven-
35 ues available to the state in such special account. On the day on which
36 the comptroller pays over and distributes to the chief fiscal officer of
37 such city or cities any revenues from such special account the commis-
38 sioner of taxation and finance shall certify to the comptroller the
39 amount to be deducted for administering, collecting and distributing the
40 tax imposed pursuant to section eleven hundred seven or eleven hundred
41 eight (as the case may be) of the tax law within the territorial limits
42 of such city or cities since [~~he~~] such commissioner last certified such
43 amount and the comptroller shall pay such amount into the general fund
44 of the state treasury to the credit of the state purposes fund therein.

45 § 12-007. Subdivision 3 of section 92-e of the state finance law, as
46 amended by chapter 187 of the laws of 1995, is amended to read as
47 follows:

48 3. Such amounts, including per capita aid apportioned to a city in aid
49 of which a municipal assistance corporation has been created (including,
50 in the case of the municipal assistance corporation for the city of New
51 York, the city of Staten Island), shall be deposited by the comptroller
52 to the credit of the special account established for the municipal
53 assistance corporation which has been created in aid of such city in
54 order to enable such corporation to fulfill the terms of any agreements
55 made with the holders of its notes and bonds and to carry out its corpo-
56 rate purposes, including the maintenance of the capital reserve fund
securing such bonds and notes, and, subject to the provisions of section

1 fifty-four of this chapter, and subdivisions five and five-a of this
2 section, the balance, if any, shall be paid to the chief fiscal officer
3 of the city in aid of which such corporation has been created as herein-
4 after provided. Notwithstanding the provisions of this subdivision, in
5 the case of the municipal assistance corporation for the city of New
6 York, such balance, if any, shall be divided between the city of New
7 York and the city of Staten Island and paid, as hereinafter provided.

8 § 12-008. Subdivision 5 of section 92-e of the state finance law, as
9 amended by chapter 55 of the laws of 1992, is amended to read as
10 follows:

11 5. Upon receipt by the comptroller of a certificate or certificates
12 from the [~~chairman~~] chairperson of a municipal assistance corporation
13 that such corporation requires a payment or payments in order to comply
14 with any agreement with the holders of its notes and bonds and to carry
15 out its corporate purposes, including the maintenance of the capital
16 reserve fund securing such bonds, from the appropriate special account
17 established for such corporation, each of which certificates shall spec-
18 ify the required payment or payments and the date when the payment or
19 payments is required, the comptroller shall pay from such special
20 account on or before the specified date or within thirty days after
21 receipt of such certificate or certificates, whichever is later, to such
22 corporation, as the [~~chairman~~] chairperson thereof may direct in any
23 such certificate, the amount or amounts so certified. In the case of
24 the municipal assistance corporation for the city of New York, each
25 amount so paid shall be comprised of per capita aid apportioned to the
26 city of New York and the city of Staten Island in the same proportion
27 that such amounts were so apportioned during the period covered by each
28 such certification. The comptroller shall from time to time, but in no
29 event later than the fifteenth day of October, January and April and the
30 last day of June of each fiscal year, pay over and distribute to the
31 chief fiscal officer of the city in aid of which such municipal assist-
32 ance corporation has been created to be paid into the treasury of such
33 city to the credit of the general fund all revenues in the special
34 account established for such corporation in the municipal assistance
35 state aid fund, if any, in excess of (i) the aggregate amount which the
36 [~~chairman~~] chairperson of such corporation has certified to the comp-
37 troller and which has been previously paid to such corporation as herein
38 above authorized, and (ii) amounts to be refunded to the general fund of
39 the state of New York pursuant to subdivision five-a of this section.
40 Notwithstanding the provisions of this subdivision, in the case of the
41 municipal assistance corporation for the city of New York, the comp-
42 troller shall from time to time, but in no event later than the
43 fifteenth of October, January and April and the last day of June of each
44 fiscal year, (a) apportion between the city of New York and the city of
45 Staten Island the revenues, if any, in the special account established
46 for such corporation in the municipal assistance state aid fund on the
47 basis of the amounts apportioned to each such city pursuant to section
48 fifty-four of this chapter and (b) pay over and distribute to the chief
49 fiscal officers of such cities to be paid into their respective treas-
50 uries to the credit of the general fund all such respective revenues in
51 excess of the aggregate amount which the chairperson of such corporation
52 has certified to the comptroller and which has been previously paid to
53 such corporation as hereinabove authorized. In no event shall the comp-
54 troller pay over and distribute any revenues to any person other than
55 the municipal assistance corporation unless and until the aggregate of
56 all payments certified to the comptroller as required by such corpo-

1 ration as of such date in order to comply with its agreements with the
2 holders of its notes and bonds and to carry out its corporate purposes,
3 including the maintenance of the capital reserve fund securing such
4 bonds, which remain unpaid to such corporation shall have been paid in
5 full to such corporation; provided, however, that no person, including
6 such corporation or the holders of its notes or bonds shall have any
7 lien on such revenues and such agreement shall be executory only to the
8 extent of such revenues available to the state in such special account.

9 § 12-009. Paragraph c of subdivision 6 of section 54 of the state
10 finance law, as added by chapter 430 of the laws of 1997, is amended to
11 read as follows:

12 c. Upon such certification of the amounts payable to counties, cities,
13 villages and towns for town-wide and town outside village purposes, such
14 per capita aid shall be apportioned and paid to the chief fiscal officer
15 of each such locality pursuant to this section on audit and warrant of
16 the state comptroller out of moneys appropriated by the legislature for
17 such purpose to the credit of the local assistance account in the gener-
18 al fund of the state treasury; provided however that upon such certifi-
19 cation of amounts payable to the city of New York or, the city of
20 Staten Island, if applicable, such per capita aid shall be apportioned
21 and paid as follows: (i) any amounts required to be paid to the city
22 university construction fund pursuant to the city university
23 construction fund act, (ii) any amounts required to be paid to the New
24 York city housing development corporation pursuant to the New York city
25 housing development corporation act, (iii) any amounts required to be
26 paid by the city to the New York city transit authority pursuant to the
27 provisions of chapter seven of the laws of nineteen hundred seventy-two,
28 (iv) any amounts required to be paid by the city to the state to repay
29 an advance made in nineteen hundred seventy-four to subsidize the fare
30 of the New York city transit authority, (v) five hundred thousand
31 dollars to the chief fiscal officer of the city of New York for payment
32 to the trustees of the police pension fund of such city pursuant to the
33 provisions of paragraph e of this subdivision, (vi) eighty million
34 dollars to the special account for the municipal assistance corporation
35 for the city of New York in the municipal assistance tax fund created
36 pursuant to section ninety-two-d of this chapter to the extent that such
37 amount has been included by the municipal assistance corporation for the
38 city of New York in any computation for the issuance of bonds on a pari-
39 ty with outstanding bonds pursuant to a contract with the holders of
40 such bonds prior to the issuance of any other bonds secured by payments
41 from the municipal assistance state aid fund created pursuant to section
42 ninety-two-e of this chapter, (vii) the balance to the special account
43 for the municipal assistance corporation for the city of New York in the
44 municipal assistance state aid fund created pursuant to section ninety-
45 two-e of this chapter, and (viii) any amounts to be refunded to the
46 general fund of the state of New York pursuant to the annual appropri-
47 ation enacted for the municipal assistance state aid fund. Notwithstand-
48 ing any existing law, no payments of per capita aid payable to the city
49 of New York shall be paid to the state of New York municipal bond bank
50 agency, the New York state sports authority or the transit construction
51 fund so long as amounts of such aid are required to be paid into the
52 municipal assistance state aid fund, and thereafter, after payment of
53 the amounts described in subparagraphs (i) through (viii) of this para-
54 graph the balance shall be paid (A) to the state in repayment of the
55 appropriation of two hundred fifty million dollars made to the city
56 pursuant to chapter two hundred fifty-seven of the laws of nineteen

1 hundred seventy-five providing emergency financial assistance to the
2 city of New York at the extraordinary session held in such year, as
3 amended, (B) to the state of New York municipal bond bank agency to the
4 extent provided by section twenty-four hundred thirty-six of the public
5 authorities law, (C) to the New York state sports authority to the
6 extent provided by section twenty-four hundred sixty-three of the public
7 authorities law, (D) to the transit construction fund to the extent
8 provided by section twelve hundred twenty-five-i of the public authori-
9 ties law, and thereafter (E) to the city of New York.

10 § 12-010. Subparagraphs 1 and 2 of paragraph d of subdivision 6 of
11 section 54 of the state finance law, as added by chapter 430 of the laws
12 of 1997, are amended to read as follows:

13 (1) to the city of New York and the city of Staten Island, on the
14 twenty-fifth days of April, June, October and February;

15 (2) to every county, city, village or town, other than the city of
16 New York and the city of Staten Island, whose fiscal year commences on
17 the first day of June or July, on the twenty-fifth days of April, May,
18 September and December;

19 § 12-011. Subdivisions 1 and 2 of section 3034 of the public authori-
20 ties law, as added by chapter 169 of the laws of 1975, are amended to
21 read as follows:

22 1. The corporation shall be administered by a board of directors,
23 consisting of nine directors, none of whom shall be officers or employ-
24 ees of the federal government or of the state or political subdivisions
25 thereof. All of the directors shall be appointed by the governor with
26 the advice and consent of the senate, provided that four of such direc-
27 tors shall be appointed upon written recommendation of the mayor. Of
28 the directors initially appointed upon the written recommendation of the
29 mayor, one shall serve for a term ending December thirty-first, nineteen
30 hundred seventy-six; one shall serve for a term ending December thirty-
31 first, nineteen hundred seventy-seven; one shall serve for a term ending
32 December thirty-first, nineteen hundred seventy-eight; and one shall
33 serve for a term ending December thirty-first, nineteen hundred seven-
34 ty-nine. The provisions of this subdivision notwithstanding, of the
35 directors appointed upon the recommendation of the mayor, the director
36 whose term expires on the December thirty-first next preceding the
37 establishment of a city of Staten Island, and any successor thereto,
38 shall be appointed only upon the written recommendation of the mayor of
39 the city of Staten Island. Of the remaining directors initially
40 appointed by the governor, one shall serve for a term ending December
41 thirty-first, nineteen hundred seventy-six; one shall serve for a term
42 ending December thirty-first, nineteen hundred seventy-seven; one shall
43 serve for a term ending December thirty-first, nineteen hundred seven-
44 ty-eight; and two shall serve for a term ending December thirty-first,
45 nineteen hundred seventy-nine. Each director shall hold office until
46 [~~his~~] such director's successor has been appointed and qualified. There-
47 after each director appointed by the governor shall serve a term of four
48 years, except that any director appointed to fill a vacancy shall serve
49 only until the expiration of [~~his~~] their predecessor's term.

50 2. The speaker and the minority leader of the assembly, the president
51 pro-tem and the minority leader of the senate, the city board of esti-
52 mate acting by majority vote, [~~and~~] the [~~vice-chairman~~] vice-chairperson
53 of the city council, the comptroller of the city of Staten Island and
54 the common council of the city of Staten Island shall each be entitled
55 to appoint a representative to the board of directors. Each such
56 representative shall be entitled to receive notice of and to attend all

1 meetings of the board of directors but shall not be entitled to vote.
2 No representative shall be an employee or officer of the federal, state
3 or city governments. Each representative shall serve at the pleasure of
4 the appointing official or body, shall be eligible for reappointment,
5 and shall hold office until [~~his~~] such representative's successor has
6 been appointed.

7 § 12-012. Subdivision 1 of section 3036 of the public authorities law,
8 as amended by chapter 201 of the laws of 1978, is amended to read as
9 follows:

10 1. Not less than one hundred twenty days before the beginning of each
11 fiscal year of the corporation (but not later than July 1, 1975 for the
12 fiscal year ending June 30, 1976), the [~~chairman~~] chairperson of the
13 board of directors of the corporation shall certify to the state comp-
14 troller and to the mayor a schedule setting forth the cash requirements
15 of the corporation for such fiscal year and the time or times when such
16 cash is required. The total amount so certified by such [~~chairman~~]
17 chairperson for such fiscal year shall be equal to: (i) the amounts
18 which are required to be deposited in the capital reserve fund author-
19 ized to be created and established pursuant to subdivision three of this
20 section during such fiscal year in order to maintain such capital
21 reserve fund of the corporation at the level required in accordance with
22 subdivision five of this section; (ii) the amounts required to be depos-
23 ited in the debt service fund of the corporation to pay all interest and
24 all payments of principal and redemption premium, if any, on notes and
25 bonds secured by such debt service fund maturing or otherwise coming due
26 during such fiscal year; and (iii) the amounts required to be deposited
27 in the operating fund of the corporation, as determined by the corpo-
28 ration, to meet the operating requirements and other expenses of the
29 corporation during such fiscal year. If any increase shall occur in the
30 cash requirements specified above, or if payments are required at a time
31 or times earlier than previously certified or if the city shall for any
32 reason fail to make timely payment of the principal and accrued interest
33 due on any obligation issued by the city to the corporation and maturing
34 within the same fiscal year, such [~~chairman~~] chairperson shall certify a
35 revised schedule of cash requirements for such fiscal year to the state
36 comptroller and to the mayor. The schedule accompanying each certifi-
37 cation (or revision thereof) shall provide for such payment dates as
38 the corporation deems appropriate to assure that sufficient funds will
39 be available from the sources identified below to enable it to meet its
40 current obligations as they come due. Upon receipt of such certifi-
41 cation, or any revision thereof, the state comptroller shall pay such
42 amount to the corporation for deposit in the appropriate funds, in
43 accordance with such certification from the special account established
44 for the corporation in the municipal assistance tax fund, in accordance
45 with subdivision one of section ninety-two-d of the state finance law,
46 including any amount transferred to the municipal assistance tax fund
47 from the stock transfer tax fund pursuant to subdivision four of section
48 [~~92-b~~] ninety-two-b of the state finance law. Any such payment shall
49 be made within thirty days of receipt of the certification or at the
50 time specified in the certification, whichever is later; provided that
51 any such amounts shall have been first appropriated by the state for
52 such purpose or shall have been otherwise made available. Any amount so
53 paid to the corporation shall be deducted from the amount otherwise
54 payable to the city or the city of Staten Island, as the case may be,
55 from the municipal assistance tax fund established by section ninety-
56 two-d of the state finance law and shall not obligate the state to make,

1 nor entitle the city or the city of Staten Island, as the case may be,
2 to receive, any additional payments.

3 § 12-013. Subdivision 1 of section 3036-a of the public authorities
4 law, as amended by chapter 55 of the laws of 1992, is amended to read as
5 follows:

6 1. In addition to the total amount certified by such [~~chairman~~] chair-
7 person for such fiscal year, all as referred to in subdivision one of
8 section three thousand thirty-six, the [~~chairman~~] chairperson shall at
9 the same time certify to the state comptroller and to the mayor a sched-
10 ule setting forth additional cash requirements of the corporation which
11 shall be equal to: (i) the amounts which are required to be deposited in
12 the capital reserve fund authorized to be created and established pursu-
13 ant to subdivision two of this section (in this section called the capi-
14 tal reserve fund) during such fiscal year in order to maintain the capi-
15 tal reserve fund at the level required in accordance with subdivision
16 four of this section; (ii) the amounts required to be deposited in the
17 bond service fund of the corporation to pay all interest and all
18 payments of principal and redemption premium, if any, on notes and bonds
19 payable from the sources hereinafter identified in this section and
20 maturing or otherwise coming due during such fiscal year; and (iii) the
21 amounts required to be deposited in the operating fund of the corpo-
22 ration heretofore established, as determined by the corporation, to meet
23 the operating requirements and other expenses of the corporation during
24 such fiscal year. If any increase shall occur in such additional cash
25 requirements specified above, or if payments are required at a time or
26 times earlier than previously certified or if the city shall for any
27 reason fail to make timely payment of the principal and accrued interest
28 due on any obligation issued by the city to the corporation and maturing
29 within the same fiscal year, such [~~chairman~~] chairperson shall certify a
30 revised schedule of such additional cash requirements for such fiscal
31 year to the state comptroller and to the mayor. The schedule accompany-
32 ing each certification (or revision thereof) shall provide for such
33 payment dates as the corporation deems appropriate to assure that suffi-
34 cient funds will be available from the sources identified below to
35 enable it to meet its current obligations under this section as they
36 come due. Upon receipt of such certification, or any revision thereof,
37 the state comptroller shall pay such amount to the corporation for
38 deposit in the appropriate funds referred to in this section, in accord-
39 ance with such certification from the special account established for
40 the corporation in the municipal assistance state aid fund in accord-
41 ance with subdivision one of section ninety-two-e of the state finance
42 law and, subject to agreements with outstanding bond and note holders of
43 the corporation, from the special account established for the corpo-
44 ration in the municipal assistance tax fund, in accordance with subdivi-
45 sion one of section ninety-two-d of the state finance law, including any
46 amount transferred to the municipal assistance tax fund from the stock
47 transfer tax fund pursuant to subdivision four of section ninety-two-b
48 of the state finance law. Any such payment shall be made within thirty
49 days of receipt of the certification or at the time specified in the
50 certification, whichever is later; provided that any such amounts shall
51 have been first appropriated by the state for such purpose or shall have
52 been otherwise made available. Any amount paid to the corporation from
53 such municipal assistance state aid fund shall be deducted from the
54 amount otherwise payable to the city or the city of Staten Island, as
55 the case may be, as per capita aid pursuant to sections fifty-four and
56 ninety-two-e of the state finance law and shall not obligate the state

1 to make, nor entitle the city or the city of Staten Island, to receive,
2 any additional payments of per capita aid. Any amount so paid to the
3 corporation from the municipal assistance tax fund shall, in addition to
4 the amount deducted pursuant to subdivision one of section three thou-
5 sand thirty-six, be deducted from the amount otherwise payable to the
6 city or the city of Staten Island, as the case may be, from the munici-
7 pal assistance tax fund and shall not obligate the state to make, nor
8 entitle the city or the city of Staten Island to receive, any additional
9 payments from such municipal assistance tax fund.

10 § 12-014. Subdivision 1 of section 3036-b of the public authorities
11 law, as amended by chapter 55 of the laws of 1992, is amended to read as
12 follows:

13 1. In addition to the total amount certified by such [~~chairman~~] chair-
14 person for such fiscal year, all as referred to in subdivision one of
15 each of sections three thousand thirty-six and three thousand thirty-
16 six-a of this title, the [~~chairman~~] chairperson shall at the same time
17 certify to the state comptroller and to the mayor a schedule setting
18 forth additional cash requirements of the corporation which shall be
19 equal to: (i) the amounts required to be deposited in the bond payment
20 fund of the corporation to pay all interest and all payments of princi-
21 pal and redemption premium, if any, on bonds and notes payable from the
22 sources hereinafter identified in this section and maturing or otherwise
23 coming due during such fiscal year; (ii) the amounts required to be
24 deposited in the operating fund of the corporation heretofore estab-
25 lished, as determined by the corporation, to meet the operating require-
26 ments and other expenses of the corporation during such fiscal year to
27 the extent not otherwise provided for; and (iii) the amounts required to
28 be deposited in the bond reserve fund created and established pursuant
29 to the agreements of the corporation made with the holders of its bonds
30 or notes issued pursuant to subdivision two-b of section three thousand
31 thirty-three of this title during such fiscal year in order to maintain
32 the bond reserve fund at the level required in accordance with the
33 agreements of the corporation made with the holders of its bonds or
34 notes issued pursuant to subdivision two-b of section three thousand
35 thirty-three of this title. If any increase shall occur in such addi-
36 tional cash requirements specified above, or if payments are required at
37 a time or times earlier than previously certified or if the city shall,
38 for any reason, fail to make timely payment of the principal and accrued
39 interest due on any obligation issued by the city to the corporation and
40 maturing within the same fiscal year, such [~~chairman~~] chairperson shall
41 certify a revised schedule of such additional cash requirements for such
42 fiscal year to the state comptroller and to the mayor. The schedule
43 accompanying each certification, or revision thereof, shall provide for
44 such payment dates as the corporation deems appropriate to assure that
45 sufficient funds will be available from the sources identified below to
46 enable it to meet its current obligations under this section as they
47 come due. Upon receipt of such certification, or any revision thereof,
48 the state comptroller shall pay such amount to the corporation for
49 deposit in the appropriate funds referred to in this section, in accord-
50 ance with such certification and subject to agreements with holders of
51 outstanding bonds and notes of the corporation, from the special account
52 established for the corporation in the municipal assistance state aid
53 fund in accordance with subdivision one of section ninety-two-e of the
54 state finance law and from the special account established for the
55 corporation in the municipal assistance tax fund in accordance with
56 subdivision one of section ninety-two-d of the state finance law,

1 including any amount transferred to the municipal assistance tax fund
2 from the stock transfer tax fund pursuant to subdivision four of section
3 ninety-two-b of the state finance law. Any such payment shall be made
4 within thirty days of receipt of the certification or at the time speci-
5 fied in the certification, whichever is later; provided that any such
6 amounts shall have been first appropriated by the state for such purpose
7 or shall have been otherwise made available. Any amount paid to the
8 corporation from such municipal assistance state aid fund, in addition
9 to the amount deducted pursuant to subdivision one of section three
10 thousand thirty-six-a of this title, shall be deducted from the amount
11 otherwise payable to the city or the city of Staten Island, as the case
12 may be, as per capita aid pursuant to sections fifty-four and ninety-
13 two-e of the state finance law and shall not obligate the state to make,
14 nor entitle the city or the city of Staten Island to receive, any addi-
15 tional payments of per capita aid. Any amount so paid to the corporation
16 from the municipal assistance tax fund, in addition to the amount
17 deducted pursuant to subdivision one of each of section three thousand
18 thirty-six or three thousand thirty-six-a of this title, shall be
19 deducted from the amount otherwise payable to the city or the city of
20 Staten Island, as the case may be, from the municipal assistance tax
21 fund and shall not obligate the state to make, nor entitle the city or
22 the city of Staten Island to receive, any additional payments from such
23 municipal assistance tax fund.

24 § 12-015. Section 6 of section 2 of chapter 868 of the laws of 1975,
25 constituting the New York state financial emergency act for the city of
26 New York, subdivision 1 as amended by chapter 777 of the laws of 1978,
27 subdivision 3 as amended by chapter 869 of the laws of 1975 and subdivi-
28 sion 4 as amended by chapter 201 of the laws of 1978, is amended to read
29 as follows:

30 § 6. Administration of the board. 1. The membership of the board
31 shall be the governor, the state comptroller (pursuant to [~~his~~] such
32 official's authority to supervise the accounts of any political subdivi-
33 sion of the state), the mayor, the city comptroller, the mayor of the
34 city of Staten Island, the comptroller of the city of Staten Island, and
35 three members appointed by the governor with the advice and consent of
36 the senate. At least two of the appointed members shall be residents of
37 the city or have their principal place of business in the city. The
38 mayor of the city of Staten Island may recommend to the governor the
39 appointment of one such appointed member. Such appointed members shall
40 serve at the pleasure of the governor. The governor shall be the [~~chair-~~
41 ~~man~~] chairperson of the board and the governor or [~~his~~] the governor's
42 representative shall preside over all meetings of the board. The board
43 shall act by majority vote of the entire board, provided, however, on
44 matters affecting only the city, as determined by the governor, the
45 state comptroller and the appointed members, the mayor of the city of
46 Staten Island and the comptroller of the city of Staten Island shall not
47 vote, and on matters affecting only the city of Staten Island, as deter-
48 mined by the governor, the state comptroller and the appointed members,
49 the mayor and the city comptroller shall not vote. Such officials not
50 voting shall not be considered members of the board for determining a
51 majority. The board shall maintain a record of its proceedings in such
52 form as it may determine, but such record shall indicate attendance and
53 all votes cast by each member. Every member of the board, who is other-
54 wise an elected official of the state or city, shall be entitled to
55 designate a representative to attend, in [~~his~~] such official's place,
56 meetings of the board and to vote or otherwise act in [~~his~~] such offi-

1 cial's behalf. Written notice of such designation shall be furnished to
2 the board by the designating member prior to any meeting attended by
3 [~~his~~] such official's representative. Any such representative shall
4 serve at the pleasure of the designating member. No such representative
5 shall be authorized to delegate any of [~~his~~] such representative's
6 duties or functions to any other person. The lieutenant governor,
7 temporary president of the senate, the minority leader of the senate,
8 speaker and minority leader of the assembly, the president of the coun-
9 cil of the city of New York, the city board of estimate acting by major-
10 ity vote, the speaker and the minority leader of the common council of
11 the city of Staten Island and the [~~vice-chairman~~] vice-chairperson and
12 the minority leader of the council of the city of New York, shall each
13 be entitled to appoint a representative to the board. Each such repre-
14 sentative shall be entitled to receive notice of and to attend all meet-
15 ings of the board but shall not be entitled to vote. No representative
16 shall be an employee or officer of the federal, state or city govern-
17 ments. Each representative shall serve at the pleasure of the appoint-
18 ing official or body, shall be eligible for reappointment, and shall
19 hold office until [~~his~~] such representative's successor has been
20 appointed.

21 2. Notwithstanding any inconsistent provisions of law, general,
22 special or local, no officer or employee of the state, or political
23 subdivision of the state, any governmental entity operating any public
24 school or college or other public agency or instrumentality or unit of
25 government which exercises governmental powers under the laws of the
26 state, shall forfeit [~~his~~] such person's office or employment by reason
27 of [~~his~~] such person's acceptance or appointment as a member, represen-
28 tative, officer, employee or agent of the board nor shall service as
29 such member, representative, officer, employee or agent of the board be
30 deemed incompatible or in conflict with such office or employment.

31 3. The members of the board appointed by the governor and all repre-
32 sentatives designated by members of the board shall serve without salary
33 or per diem allowance but shall be entitled to reimbursement for actual
34 and necessary expenses incurred in the performance of official duties
35 under this act, provided however that such members and representatives
36 are not, at the time such expenses are incurred, public employees other-
37 wise entitled to such reimbursement.

38 4. The governor and the mayor, jointly, shall appoint an executive
39 director of the board who shall serve at the pleasure of the board and
40 may be removed by the board. The board may delegate to the executive
41 director or to one or more of its other officers, employees or agents,
42 such powers and duties as the board may deem proper, except any duties
43 inconsistent with the duties and functions prescribed by any other
44 office or position any such person may hold.

45 § 12-016. Section 7 of section 2 of chapter 868 of the laws of 1975,
46 constituting the New York state financial emergency act for the city of
47 New York, paragraphs a, b, c, e, f and g of subdivision 1, paragraphs
48 (b) and (f) of subdivision 3 and subdivisions 4 and 6 as amended and
49 subdivision 7 as added by chapter 777 of the laws of 1978, paragraph h
50 of subdivision 1 as amended by chapter 870 of the laws of 1975, para-
51 graphs d and i of subdivision 1 as amended by chapter 830 of the laws of
52 1987, subdivisions 3 and 5 as added by chapter 201 of the laws of 1978,
53 and paragraph (i) of subdivision 3 as amended by chapter 285 of the laws
54 of 1985, is amended to read as follows:

55 § 7. Functions of the board. 1. In carrying out the purposes of this
56 act, the board shall perform the following functions:

1 a. In accordance with the provisions of section eight of this act, the
2 board shall (i) consult with the city and the covered organizations and
3 to the extent it deems it necessary or appropriate to accomplish the
4 purposes of this act, the city of Staten Island, in the preparation of
5 the financial plan, and certify to the city the revenue estimates
6 approved therein, (ii) prescribe the form of the financial plan and the
7 supporting information required in connection therewith, and (iii) exer-
8 cise the rights of approval, disapproval and modification with respect
9 to the financial plan, including but not limited to the revenue esti-
10 mates contained therein.

11 b. The board, to the extent it deems it necessary or appropriate in
12 order to accomplish the purposes of this act, shall establish and adopt
13 procedures with respect to the (i) proper maintenance of the board fund,
14 (ii) the deposit and investment of revenues in such fund and (iii)
15 disbursement of monies from such fund.

16 c. The board shall, from time to time and to the extent it deems
17 necessary or appropriate in order to accomplish the purposes of this
18 act, (i) review the operations, management, efficiency and productivity
19 of such city operations and of such covered organizations or of the city
20 of Staten Island or portions thereof as the board may determine, and
21 make reports thereon; (ii) audit compliance with the financial plan in
22 such areas as the board may determine; (iii) recommend to the city, the
23 city of Staten Island and the covered organizations such measures relat-
24 ing to their operations, management, efficiency and productivity as it
25 deems appropriate to reduce costs and improve services so as to advance
26 the purposes of this act; and (iv) obtain information of the financial
27 condition and needs of the city, the city of Staten Island and the
28 covered organizations. Nothing herein shall diminish the powers of the
29 comptroller otherwise provided by law and the board may request the
30 assistance of the comptroller in performing the above functions.

31 d. The board (i) shall receive from the city and review the reports to
32 be prepared by or on behalf of the city pursuant to section seven-a;
33 (ii) shall receive from the city, the city of Staten Island and the
34 covered organizations and from the deputy comptroller, and shall review
35 such financial statements and projections, budgetary data and informa-
36 tion, and management reports and materials as the board deems necessary
37 or desirable to accomplish the purposes of this act; and (iii) shall
38 inspect, copy and audit such books and records of the city, the city of
39 Staten Island and the covered organizations as the board deems necessary
40 or desirable to accomplish the purposes of this act.

41 e. All contracts entered into by the city or any covered organization
42 and, to the extent the board deems necessary or desirable to accomplish
43 the purposes of this act, by the city of Staten Island must be consist-
44 ent with the provisions of this act and must comply with the require-
45 ments of the financial plan as approved by the board. With respect to
46 all contracts or other obligations to be entered into by the city or any
47 covered organization after October fifteenth, nineteen hundred seventy-
48 five, requiring the payment of funds or the incurring of costs by the
49 city or any covered organization:

50 (i) Within twenty days from the effective date of this act the mayor
51 shall present to the board proposed regulations respecting the catego-
52 ries and types of contracts and other obligations required to be
53 reviewed by the board pursuant to this subdivision [e]. Within thirty
54 days from the effective date of this act, the board shall approve or
55 modify and approve such proposed regulations or promulgate its own in
56 the event that such proposed regulations are not submitted to it within

1 the twenty days as provided for herein. Such regulations may thereafter
2 be modified by the board from time to time on not less than thirty days
3 notice to the mayor and the mayor may from time to time propose modifi-
4 cations to the board. Unless expressly disapproved or modified by the
5 board within thirty days from the date of submission by the mayor, any
6 such proposed regulations or modifications shall be deemed approved by
7 the board;

8 (ii) Prior to entering into any contract or other obligations subject
9 to review of the board under its regulations, the city or any covered
10 organization and, to the extent the board deems necessary or desirable
11 to accomplish the purposes of this act, the city of Staten Island shall
12 submit a copy of such contract or other obligation to the board accompa-
13 nied by an analysis of the projected costs of such contract or other
14 obligation and a certification that performance thereof will be in
15 accordance with the financial plan, all in such form and with such addi-
16 tional information as the board may prescribe. The board shall promptly
17 review the terms of such contract or other obligation and the supporting
18 information in order to determine compliance with the financial plan;

19 (iii) During a control period the board shall, by order, disapprove
20 any contract or other obligation reviewed by it only upon a determi-
21 nation that, in its judgment, the performance of such contract or other
22 obligation would be inconsistent with the financial plan and the city,
23 the city of Staten Island or covered organization shall not enter into
24 such contract or other obligation;

25 (iv) During a control period if the board approves the terms of a
26 reviewed contract or other obligation, the city or covered organization
27 and, to the extent the board deems necessary or desirable to accomplish
28 the purposes of this act, the city of Staten Island may enter into such
29 contract or other obligation upon the terms submitted to the board.
30 Failure of the board to notify the city, the city of Staten Island or
31 covered organization within thirty days (or such additional time not
32 exceeding thirty days as the board shall have notified the city or
33 covered organization, that it requires to complete its review and analy-
34 sis) after submission to it of a contract or other obligation that such
35 contract or other obligation has been disapproved shall be deemed to
36 constitute board approval thereof.

37 f. Upon submission thereof by the city, the board shall review the
38 terms of each proposed long-term and short-term borrowing by the city
39 and any covered organization to be effected during a control period but
40 after October fifteenth, nineteen hundred seventy-five, and no such
41 borrowing shall be made unless approved by the board. To the extent the
42 board deems necessary or desirable to accomplish the purposes of this
43 act, during a control period, the city of Staten Island shall submit and
44 the board shall review the terms of each proposed long-term and short-
45 term borrowing by the city of Staten Island and no such borrowing shall
46 be made unless approved by the board. Each such proposed borrowing by a
47 covered organization shall be submitted to the city by the covered
48 organization before it may be considered by the board. Not more than
49 thirty days after any such submission by a covered organization the city
50 shall transmit any such proposed terms of borrowing to the board togeth-
51 er with the certification of the city as to whether such proposed terms
52 of borrowing are in accordance with the financial plan and are consist-
53 ent with the objectives and purposes of this act. Any such submission
54 to the city shall be accompanied by a certification of the covered
55 organization that the terms thereof are in accordance with the financial
56 plan and are consistent with the objectives or purposes of this act. The

1 transmittal by the city to the board shall include a recommendation by
2 the city for the approval or disapproval of such proposed terms of
3 borrowing pursuant to the terms of this paragraph. In the event the
4 city does not make such transmittal within such thirty day period, such
5 covered organization may submit such proposed borrowing directly to the
6 board. The board shall disapprove any borrowing if it determines that
7 such borrowing is inconsistent with the financial plan or the objectives
8 or purposes of this act. The board shall consult and coordinate with the
9 municipal assistance corporation for the city of New York with respect
10 to borrowings of the city and any covered organization and shall receive
11 reports from the [~~municipal~~] municipal assistance corporation for the
12 city of New York on its review of borrowings by the city. No covered
13 organizations shall be prohibited from issuing bonds or notes to pay
14 outstanding bonds or notes.

15 g. The board and the comptroller shall receive quarterly reports from
16 the city comptroller setting forth the debt service requirements on all
17 bonds and notes of the city and the covered organizations for the
18 following quarter, which reports shall be in such form and contain such
19 information as the board shall determine. Such reports shall be issued
20 no later than sixty days prior to the start of the quarter to which they
21 pertain and shall be updated immediately upon each issuance of bonds or
22 notes after the date of such report to reflect any change in debt
23 service requirements as a result of such issuance. The board also shall
24 receive from the city monthly and quarterly financial reports, which
25 reports shall be in such form and contain such information as the board
26 shall determine and shall be made available by the city to the public.
27 In order to avoid duplicative reports and reporting requirements, to the
28 extent that the city is required to submit monthly or quarterly finan-
29 cial reports to the department of the treasury pursuant to any agreement
30 or arrangement made in connection with federal guarantees of notes or
31 boards issued by the city or a state financing agency, copies of such
32 reports shall be submitted to the board in satisfaction of the monthly
33 and quarterly reporting requirements set forth above, together with such
34 additional information as the board may require. Each monthly and quar-
35 terly report herein required to be submitted to the board must indicate
36 any variance between actual and budgeted revenues, expenses or cash for
37 the period covered by such report. During a control period, to the
38 extent the board deems necessary or desirable to accomplish the purposes
39 of this act, the city of Staten Island shall be subject to the same
40 reporting requirements as the city.

41 h. The board shall issue, to the appropriate officials of the city,
42 the city of Staten Island and the covered organizations, such orders as
43 it deems necessary to accomplish the purposes of this act, including but
44 not limited to timely and satisfactory implementation of an approved
45 financial plan. Any order so issued shall be binding upon the official
46 to whom it was issued and failure to comply with such order shall
47 subject the official to the penalties described in section eleven of
48 this act.

49 i. The board shall coordinate with the municipal assistance corpo-
50 ration for the city of New York and the deputy comptroller with respect
51 to the performance of its review and monitoring of the revenues and
52 expenditures of the city and the covered organizations.

53 2. In the event of any default by the city on its outstanding bonds or
54 notes, and so long as such default has not been cured by the city, the
55 board may, any provisions of this act notwithstanding, take any action
56 that it is authorized to take pursuant to title six-A of article two of

1 the local finance law, and may direct the city to take any action that
2 the city is authorized to take under such law.

3 3. (a) Notwithstanding any provision of the New York City Collective
4 Bargaining Law, codified as chapter [~~fifty-four~~ three of title twelve
5 of the New York city administrative code, or any general or special law
6 to the contrary, any report or recommendation of an impasse panel
7 constituted pursuant to such chapter which provides for an increase in
8 wages or fringe benefits of any employee of the city or covered organ-
9 ization, in addition to considering any standard or factor required to
10 be considered by applicable law, including the standards enumerated in
11 section [~~1173-7.0~~ 12-311](c)(3)(b) of such chapter, shall also take into
12 consideration and accord substantial weight to the financial ability of
13 the city and or covered organization to pay the cost of such increase in
14 wages or fringe benefits.

15 (b) The board of collective bargaining constituted pursuant to such
16 chapter, when reviewing such report or recommendation before proceeding
17 to other issues, shall make a threshold determination as to whether such
18 report or recommendation for an increase in wages or fringe benefits is
19 within the city's and or covered organization's financial ability to
20 pay. If the threshold determination is in the negative, the matter shall
21 be remitted to the impasse panel for further consideration. If the
22 threshold determination is in the affirmative, the further review of the
23 report or recommendation with respect to other issues, if any, shall
24 proceed as provided by law. Unless the parties stipulate otherwise, the
25 threshold determination shall be made within thirty days after
26 submission of the report or recommendation to the board of collective
27 bargaining.

28 (c) Any determination pursuant to article eight of the labor law or
29 any agreement or stipulation entered into in lieu thereof which provides
30 for an increase in wages or fringe benefits of any employee of the city
31 or covered organization shall, in addition to considering any standard
32 or factor required to be considered by applicable law, also take into
33 consideration and accord substantial weight to the financial ability of
34 the city and or covered organization to pay the cost of such increase.

35 (d) Any report or recommendation of a fact finding or similar type
36 panel or any interest arbitration award which provides for an increase
37 in wages or fringe benefits of any employee of the city or covered
38 organization not subject to the provisions of the New York City Collec-
39 tive Bargaining Law, codified as chapter [~~fifty-four~~ three of title
40 twelve of the New York city administrative code, shall, in addition to
41 considering any standard or factor required to be considered by applica-
42 ble law, also take into consideration and accord substantial weight to
43 the financial ability of the city and or covered organization to pay the
44 cost of such increase.

45 (e) Any party to a proceeding before the board of collective bargain-
46 ing as described in paragraph (b) or other body as described in para-
47 graphs (c) or (d) [~~hereof~~ of this subdivision] may commence a special
48 proceeding in the appellate division, first department, supreme court,
49 state of New York, to review the threshold determination as to the city
50 and/or covered organization's financial ability to pay. Such proceeding
51 shall be commenced not later than thirty days after the final determi-
52 nation has been made by the board of collective bargaining in the case
53 of paragraph (b) or other body in the case of paragraphs (c) or (d) of
54 this subdivision. Such proceeding shall have preference over all other
55 causes in such appellate division, other than causes relating to the
56 election law.

1 (f) The court shall make a de novo review of the record solely for the
2 purpose of determining whether an award of an increase in wages or
3 fringe benefits was within the city's and or covered organization's
4 financial ability to pay. The court's findings as to such issue shall be
5 based upon a preponderance of all the evidence set forth in the record.
6 Unless the parties stipulate otherwise, arguments or submission shall be
7 had within fifteen days after commencement of the special proceeding and
8 the court shall render its decision within fifteen days thereafter. All
9 questions, other than the question relating to the threshold determi-
10 nation, shall be reviewed by the appellate division in the same proceed-
11 ing in the manner provided by articles seventy-five or seventy-eight of
12 the civil practice law and rules as may be appropriate, notwithstanding
13 that the issue would otherwise have been cognizable in the first
14 instance before a special or trial term of the supreme court. If an
15 appeal shall otherwise lie from such determination of the appellate
16 division to the court of appeals, notice of such appeal shall be filed
17 within thirty days after the entry of the final order or judgment of the
18 appellate division if such appeal is of right or within ten days after
19 entry of an order granting leave to appeal and such appeal shall have
20 preference over all other appeals other than appeals relating to the
21 election law.

22 (g) At any stage of any proceeding under paragraphs (a), (b), (c), (d)
23 and (e) hereof or any appeal from an order or judgment therefrom, the
24 board may intervene as a party on the issue of the financial ability of
25 the city and or covered organization to pay the cost of an increase in
26 wages or fringe benefits.

27 (h) For the purposes of this subdivision, financial ability to pay
28 shall mean the financial ability of the city and or covered organization
29 to pay the cost of any increase in wages or fringe benefits without
30 requiring an increase in the level of city taxes existing at the time of
31 the commencement of a proceeding under paragraph (a), (c) or (d) hereof.

32 [~~(i) The provisions of this subdivision shall terminate on June thir-~~
33 ~~tieth, nineteen hundred eighty six.~~]

34 4. During a control period, except upon approval by the board in
35 accordance with the provisions of paragraph e or f of subdivision one of
36 this section, as the board shall determine, neither the city nor a
37 covered organization nor, to the extent the board deems necessary or
38 desirable to accomplish the purposes of this act, the city of Staten
39 Island shall enter any agreement or other arrangement, whether or not it
40 creates a debt of the city, the city of Staten Island or a covered
41 organization, pursuant to which the revenues or credit of the city or
42 the city of Staten Island may be directly or indirectly pledged, encum-
43 bered, committed or promised, contingently or otherwise, for the payment
44 of obligations of a public benefit corporation. Nothing in this subdivi-
45 sion shall limit the right of the city to comply with the provisions of
46 any existing agreement or other arrangement in respect of the obli-
47 gations of a public benefit corporation.

48 5. The board may employ such consultants as it may deem necessary to
49 assist it in performing its functions required under this act.

50 6. The board shall have the authority to make and execute agreements
51 and all other instruments which the board deems necessary for the exer-
52 cise of its powers and functions including, in connection with any
53 agreement by the federal government or any agency or instrumentality
54 thereof to guarantee the payment of the principal of or interest on
55 bonds or notes issued by the city or by a state financing agency, to
56 enter into one or more agreements containing terms and conditions

1 required by the secretary of the treasury pursuant to the New York City
2 Loan Guarantee Act of 1978, Public Law 95-339 with the federal govern-
3 ment or any agency or instrumentality thereof with respect to such guar-
4 antee or any matters related thereto and to comply with such terms and
5 conditions.

6 7. The board may appoint qualified individuals to participate as
7 members of such audit, productivity or similar committees or councils as
8 the city may from time to time establish in consultation with the board.
9 Such individuals, however, shall not be deemed to be officers, employees
10 or agents of the board. The board shall review and report on, not less
11 than annually, the development and implementation of methods for enhanc-
12 ing the productivity of the city's labor force proposed by any such
13 committee or council.

14 § 12-017. Section 8 of section 2 of chapter 868 of the laws of 1975,
15 constituting the New York state financial emergency act for the city of
16 New York, subdivisions 1, 2, 4, 5 and 6 as amended by chapter 201 of the
17 laws of 1978, the opening paragraph and paragraph c of subdivision 1,
18 subdivisions 2-a and 3 as amended by chapter 777 of the laws of 1978,
19 paragraph a of subdivision 1 as amended by chapter 118 of the laws of
20 2020, is amended to read as follows:

21 § 8. Development of the financial plan. 1. Pursuant to the proce-
22 dures contained in subdivision three of this section, each year the
23 city and to the extent the board deems necessary or desirable to accom-
24 plish the purposes of this act, the city of Staten Island shall develop,
25 and may from time to time modify, with the approval of the board during
26 a control period, a four year financial plan covering the city and the
27 covered organizations or the city of Staten Island, as applicable.

28 Each such financial plan and financial plan modification shall comply
29 with the requirements of subdivision four of this section and shall,
30 except as otherwise provided pursuant to subdivision two-a of this
31 section, conform to the following standards:

32 a. For its fiscal years ending June thirtieth, nineteen hundred seven-
33 ty-nine through June thirtieth, nineteen hundred eighty-one, the city's
34 budget covering all expenditures other than capital items shall be
35 prepared and balanced so that the results thereof would not show a defi-
36 cit when reported in accordance with the accounting principles set forth
37 in the state comptroller's uniform system of accounts for municipi-
38 palities, as the same may be modified by the comptroller, in consulta-
39 tion with the city comptroller, for application to the city; subject to
40 the provision of subdivision four of section three thousand thirty-eight
41 of the public authorities law with respect to contributions by the city
42 or other public employer to any retirement system or pension fund and
43 subject to the provision of paragraph (c) of subdivision five of section
44 three thousand thirty-eight of the public authorities law with respect
45 to expense items included in the capital budget of the city. For the
46 fiscal year ending June thirtieth, nineteen hundred eighty-two, and for
47 each fiscal year thereafter, the city's budget covering all expenditures
48 other than capital items shall be prepared and balanced so that the
49 results thereof would not show a deficit when reported in accordance
50 with generally accepted accounting principles and would permit compar-
51 ison of the budget with the report of actual financial results prepared
52 in accordance with generally accepted accounting principles. With
53 respect to financial plans that include the fiscal years ending June
54 thirtieth, nineteen hundred seventy-nine through June thirtieth, nine-
55 teen hundred eighty-one, the city's budget covering all expenditures
56 other than capital items shall be prepared in accordance with generally

1 accepted accounting principles and there shall be substantial progress
2 in each such fiscal year towards achieving a city budget covering all
3 expenditures other than capital items the results of which would not
4 show a deficit when reported in accordance with generally accepted
5 accounting principles. The city shall eliminate expense items from its
6 capital budget not later than the commencement of the fiscal year ending
7 June thirtieth, nineteen hundred eighty-two. For the fiscal year ending
8 June thirtieth, nineteen hundred eighty-nine, and for each fiscal year
9 thereafter, the budgets covering all expenditures other than capital
10 items of each of the covered organizations shall be prepared and
11 balanced so that the results thereof would not show a deficit when
12 reported in accordance with generally accepted accounting principles;
13 and for each fiscal year prior thereto, there shall be substantial
14 progress towards such goal. Notwithstanding the foregoing and the
15 provisions of any general or special state law or local law to the
16 contrary, including but not limited to the New York city charter: (i)
17 all costs that would be capital costs in accordance with generally
18 accepted accounting principles, but for the application of governmental
19 accounting standards board statement number forty-nine, shall be deemed
20 to be capital costs for purposes of this act and any other provision of
21 state or local law, including but not limited to the New York city char-
22 ter, relevant to the treatment of such costs; and (ii) the determination
23 as to the existence of a deficit pursuant to this act and any other
24 provision of state or local law, including but not limited to the New
25 York city charter, shall be made without regard to changes in restricted
26 fund balances, as defined by the governmental accounting standards
27 board, where restrictions in relation to such fund balances are imposed
28 by state or federal law or regulation, or otherwise by private or
29 governmental parties other than the city of New York, and without regard
30 to funds held in the health stabilization fund, the school crossing
31 guards health insurance fund, any revenue stabilization fund established
32 pursuant to section fifteen hundred twenty-eight of the New York city
33 charter and the management benefits fund established by the city of New
34 York. Deposits into any such revenue stabilization fund shall be deemed
35 to be expenses of such city in the fiscal year in which such deposits
36 are made, and withdrawals from such fund shall be deemed to be revenues
37 of such city in the year in which such withdrawals are made; provided
38 however, that surpluses of such city, whether accumulated from fiscal
39 years ending prior to the effective date of the chapter of the laws of
40 two thousand twenty that amended this paragraph or existing at the close
41 of any fiscal year ending after such effective date, shall be deposited
42 into such revenue stabilization fund as soon as practicable, and such
43 deposits shall not be deemed expenses of the city in the fiscal year in
44 which such deposits are made.

45 b. The limitations on its outstanding short-term obligations required
46 by subdivision nine of section three thousand thirty-eight of the public
47 authorities law and by section nine-b of this act shall be observed at
48 all times, as each is amended from time to time.

49 c. Provision shall be made for the payment in full of the debt
50 service on all bonds and notes of the city and the covered organizations
51 (other than notes held by the municipal assistance corporation for the
52 city of New York to the extent that such corporation has evidenced its
53 intention not to present such notes for payment during the fiscal year
54 in which the determination is made provided that such notes were held by
55 such corporation on June thirtieth, nineteen hundred seventy-eight or
56 were issued in exchange for or in refunding or renewal of notes held by

1 such corporation on such date) and to the extent the board deems neces-
2 sary or desirable to accomplish the purposes of this act, the city of
3 Staten Island, for the adequate funding of programs of the city, the
4 city of Staten Island, if applicable and the covered organizations which
5 are mandated by state or federal law and for which obligations are going
6 to be incurred during the fiscal year and for payment of a guarantee fee
7 or any other amounts required by the United States of America or any
8 agency or instrumentality thereof in connection with the guarantee of
9 the payment of the principal of or interest on bonds or notes issued by
10 the city.

11 d. All projections of revenues and expenditures contained in a finan-
12 cial plan shall be based on reasonable and appropriate assumptions and
13 methods of estimation. All cash flow projections shall be based upon
14 reasonable and appropriate assumptions as to sources and uses of cash
15 (including but not limited to the timing thereof), and shall provide for
16 operations of the city, the city of Staten Island, if applicable and
17 covered organizations to be conducted within the cash resources so
18 projected.

19 e. The city shall provide a general reserve for each fiscal year to
20 cover potential reductions in its projected revenues or increases in its
21 projected expenditures during each such fiscal year. The amount
22 provided for such general reserve shall be estimated by the city in
23 accordance with paragraph d of this subdivision, but in no event shall
24 it be less than one hundred million dollars at the beginning of any
25 fiscal year.

26 f. For financial plans beginning with the fiscal year ending June
27 thirtieth, nineteen hundred eighty-three or any succeeding fiscal year,
28 the first fiscal year included in any financial plan shall make
29 provision for the repayment of any deficit incurred by the city during
30 the preceding fiscal year.

31 2. In developing the financial plan the city shall seek to achieve a
32 stabilized work force for the city and, to the extent a reduction in the
33 work force is required, primary recourse shall be had to the attrition
34 process to accomplish such reduction.

35 2-a. The city and the board shall confer concerning the projected
36 effect on the budgets of the city and the covered organizations of any
37 change in generally accepted accounting principles, or change in the
38 application of generally accepted accounting principles to the city and
39 the covered organizations, made after the effective date of this act.
40 If the board determines that immediate compliance with such change will
41 have a material effect on such budgets over a time period insufficient
42 to accommodate the effect without a substantial adverse impact on the
43 delivery of essential services, the board may authorize and approve a
44 method of phasing the requirements of such change into such budgets over
45 such reasonably expeditious time period as the board deems appropriate.

46 3. The financial plan shall be developed and, during a control peri-
47 od, shall be approved, and may from time to time be modified, in accord-
48 ance with the following procedures:

49 a. The city shall, by June first, nineteen hundred seventy-eight,
50 prepare and submit a financial plan to the board covering the four year
51 period which begins with the fiscal year ending June thirtieth, nineteen
52 hundred seventy-nine. Thereafter, at least fifty days prior to the
53 beginning of each fiscal year or on such other date as the board may
54 approve upon the request of the city or the city of Staten Island, if
55 applicable, the city, and, during a control period, to the extent the
56 board deems necessary or desirable to accomplish the purposes of this

1 act, the city of Staten Island shall prepare and submit a financial plan
2 to the board covering the four year period beginning with such fiscal
3 year. On such dates the mayor shall also submit to the board the city's
4 executive expense, revenue and capital budgets for the ensuing fiscal
5 year and a certificate of the mayor stating that such budgets are
6 consistent with the financial plan submitted therewith, that projections
7 contained in the budgets and financial plan are based upon reasonable
8 and appropriate assumptions and methods of estimation, and that opera-
9 tion within the budgets is feasible.

10 b. (i) During a control period the board shall promptly review each
11 financial plan and financial plan modification submitted by the city or,
12 the city of Staten Island, if applicable. Not more than forty-five days
13 after submission of a financial plan or more than thirty days after
14 submission of a financial plan modification the board shall determine
15 whether the financial plan or financial plan modification is complete
16 and complies with the standards set forth in subdivision one of this
17 section and shall approve or disapprove the financial plan or financial
18 plan modification in accordance with the provisions of this section. If
19 the board determines that the financial plan or financial plan modifica-
20 tion is complete and complies with the standards set forth in subdivi-
21 sion one of this section, the board shall approve the financial plan or
22 financial plan modification. Upon making such determination the board
23 shall make a certification to the city or, the city of Staten Island, if
24 applicable, setting forth revenue estimates approved by the board in
25 accordance with such determination.

26 (ii) At all times other than during a control period the board shall
27 promptly review each financial plan and financial plan modification
28 submitted by the city. If the board determines after such review that
29 the financial plan or financial plan modification submitted by the city
30 is not in accordance with the standards set forth in subdivision one of
31 this section, the board shall promptly so notify the city and may take
32 such other action under this act as it deems appropriate.

33 c. The board shall disapprove a financial plan or financial plan
34 modification if during a control period it determines that the financial
35 plan or financial plan modification is incomplete or fails to comply
36 with the provisions of subdivision one of this section. In disapproving
37 a financial plan or a financial plan modification the board may order
38 that one or more of the following actions be taken:

39 (i) expenditures or reserves to assure availability of amounts
40 required for debt service requirements on all bonds and notes of the
41 city, the city of Staten Island, if applicable and the covered organiza-
42 tions or expenditures required for adequate funding of programs of the
43 city, the city of Staten Island, if applicable and the covered organiza-
44 tions mandated by state or federal law and for which obligations are
45 going to be incurred during the fiscal year, be increased to the levels
46 required to provide for their payment in full;

47 (ii) the revenue projections (or any item thereof) during any period
48 be adjusted to comply with the standards set forth in subdivision one of
49 this section; and

50 (iii) the aggregate expenditures projected for any period be reduced
51 to conform to revenue estimates certified by the board in order to
52 comply with the standards set forth in subdivision one of this section.

53 d. During a control period in the event that the city or the city of
54 Staten Island, if applicable shall, for any reason, fail to submit a
55 financial plan prior to the beginning of a fiscal year, as required by
56 paragraph a of this subdivision, or in the event that the board has not,

1 for any reason permitted under this act, approved a financial plan
2 submitted by the city or the city of Staten Island, if applicable prior
3 to the beginning of a fiscal year, the board shall formulate and adopt a
4 financial plan to be effective until the board approves a financial plan
5 submitted by the city or the city of Staten Island, if applicable. Any
6 financial plan so formulated by the board shall comply with the stand-
7 ards set forth in subdivision one of this section. The budgets and
8 operations of the city or the city of Staten Island, if applicable and
9 the covered organizations at all times shall be in conformance and
10 compliance with the respective financial plan then in effect.

11 e. After the initial adoption by the city, or the approval by the
12 board during a control period, or, during a control period, to the
13 extent the board deems necessary or desirable to accomplish the purposes
14 of this act, the initial adoption by the city of Staten Island, of a
15 financial plan, projections of revenues and expenditures and other esti-
16 mates contained in the financial plan shall be reexamined by the board
17 at least quarterly in consultation with the city and the covered organ-
18 izations, and during a control period the city or the city of Staten
19 Island, as applicable shall prepare and submit to the board financial
20 plan modifications at such times, in such detail and within such time
21 periods as the board may require in order to modify the respective
22 financial plan to conform to the standards set forth in subdivision one
23 of this section. During a control period in the event the board deter-
24 mines that (i) revenue estimates (or any item thereof) must be adjusted
25 to ensure compliance with the standards set forth in subdivision one of
26 this section, or (ii) that the city or a covered organization or the
27 city of Staten Island, as applicable is expending funds at a rate that
28 would cause expenditures to exceed the aggregate expenditure limitation
29 for the city or covered organization or the city of Staten Island, as
30 applicable provided for in the financial plan then in effect, prior to
31 the expiration of the fiscal year, the city or the city of Staten
32 Island, as applicable shall submit a financial plan modification to
33 effect such adjustments in revenue estimates and reductions in total
34 expenditures as may be necessary to conform to such standards or aggre-
35 gate expenditure limitations. If during a control period the city fails
36 to submit such modification after such determination as to adjustments
37 in revenue estimates or such determination as to rates of expenditures,
38 or to submit a financial plan modification in the detail or within the
39 time period specified by the board, or if such modification is disap-
40 proved by the board as not conforming to the standards set forth in
41 subdivision one of this section, the board may formulate and adopt such
42 financial plan modification as it deems appropriate to ensure that the
43 financial plan with respect to such entity continues to meet such stand-
44 ards. Such modification shall become effective on its adoption.
45 Notwithstanding the provisions of this section, in the event the city or
46 the city of Staten Island, as applicable shall determine that, due to
47 unforeseen events during a fiscal year, compliance with the standards
48 set forth in paragraph a of subdivision one of this section would result
49 in a material adverse impact upon the delivery of essential services,
50 the city or the city of Staten Island, as applicable shall notify the
51 board of such determination, together with such information, projections
52 or analyses relating thereto as the board may require, and shall submit
53 a modification to the financial plan reflecting such determination.
54 During a control period the board shall disapprove any such modification
55 unless it finds that (i) [~~the city's~~] such determination is supported by
56 information, projections and analyses which the board deems substantial-

1 ly accurate in all material respects and (ii) such events, in its judg-
2 ment, warrant such modification to the financial plan to avoid such
3 adverse impact on the delivery of essential services.

4 f. The city or the city of Staten Island may, from time to time,
5 submit financial plan modifications to each plan for review by the
6 board. During a control period the board shall approve such modifica-
7 tions unless it determines that such modifications would constitute
8 grounds for disapproval of the financial plan pursuant to paragraph c of
9 this subdivision, or if applicable, pursuant to paragraph e of this
10 subdivision.

11 g. Anything contained in this act to the contrary notwithstanding,
12 during a control period the board may at any time disapprove or after
13 consultation with the city or the city of Staten Island, as appropriate,
14 revise the revenue estimates (or any item thereof) prepared by the city
15 or the city of Staten Island in connection with the preparation of a
16 financial plan or any modification thereto and determined by the board
17 not to be based on assumptions and methods of estimation which are
18 reasonable and appropriate under the circumstances and in view of the
19 objectives and purposes of the act. The board may after consultation
20 with the city or the city of Staten Island, as appropriate, determine
21 the estimated revenues of the city or the city of Staten Island, as
22 appropriate, and the covered organizations provided, however, that any
23 revenues estimated by the board shall be based on reasonable and appro-
24 priate assumptions and methods of estimation.

25 4. Each financial plan shall be in such form and shall contain such
26 information for each year during which the financial plan is in effect
27 as the board may specify, and shall, in such detail as the board may
28 from time to time prescribe, include projections of all revenues,
29 expenditures and cash flows (including but not limited to projected
30 capital expenditures and debt issuances) and a schedule of projected
31 capital commitments of the city or the city of Staten Island, as appro-
32 priate, and except in such instances as the board may deem appropriate
33 each of the covered organizations. In addition, each financial plan and
34 financial plan modification shall include a statement of the significant
35 assumptions and methods of estimation used in arriving at the projec-
36 tions contained therein, set forth in such form and in such detail as
37 the board may from time to time prescribe.

38 5. The city and the covered organizations and during a control period
39 to the extent the board deems necessary or desirable to accomplish the
40 purposes of this act, the city of Staten Island shall promptly furnish
41 the board with any information which the board may request to satisfy
42 itself that (i) projected employment levels, collective bargaining
43 agreements and other action relating to employee costs, capital
44 construction and such other matters as the board may specify, are
45 consistent with the provisions made for such costs in the financial
46 plan, (ii) the city and the covered organizations or the city of Staten
47 Island, as appropriate are taking whatever action is necessary with
48 respect to programs mandated by state and federal law to ensure that
49 expenditures for such programs are limited to and covered by the expend-
50 itures stated in the financial plan, and (iii) adequate reserves are
51 provided to maintain programs mandated by state and federal law and for
52 which obligations are going to be incurred in the fiscal year and other
53 essential programs in the event revenues have been overestimated or
54 expenditures underestimated for any period.

55 6. For each financial plan and financial plan modification to be
56 prepared and submitted by the city to the board pursuant to the

1 provisions of this section, the covered organizations shall submit to
2 the city such information with respect to their projected expenditures,
3 revenues, cash flows and a schedule of projected capital commitments
4 for each year covered by such financial plan or modification as the city
5 shall determine. Notwithstanding any other provision of law limiting
6 the authority of the city with respect to any covered organization, the
7 city, in the preparation and submission of the financial plan and
8 modifications thereof, shall (except for debt service or for other
9 expenditures to the extent that such expenditures are required by law)
10 have the power to determine the aggregate expenditures to be allocated
11 to any covered organization in the financial plan and any modifications
12 thereto.

13 § 12-018. Section 9 of section 2 of chapter 868 of the laws of 1975,
14 constituting the New York state financial emergency act for the city of
15 New York, as amended by chapter 201 of the laws of 1978 and the section
16 heading and subdivisions 1 and 4 as amended by chapter 777 of the laws
17 of 1978, is amended to read as follows:

18 § 9. Establishment and application of the board fund. 1. There is
19 hereby established a fund designated the board fund. Commencing on
20 October twentieth, nineteen hundred seventy-five, and for the duration
21 of a control period, all revenues received or to be received by the city
22 or any covered organization and to the extent the board deems necessary
23 or desirable to accomplish the purposes of this act, the city of Staten
24 Island shall, unless exempted by order of the board, be revenues of the
25 board fund and shall be for the account of the city, the city of Staten
26 Island or the appropriate covered organizations, except (i) to the
27 extent expressly prohibited by federal law, (ii) where revenues of the
28 city are deposited in the general debt service fund, the TAN debt
29 service account or the RAN debt service account, or (iii) where such
30 revenues are pledged to the payment of any outstanding bonds, notes or
31 other obligations of covered organizations or state public authorities
32 as defined in section two hundred one of the civil service law.
33 Disbursement from the board fund shall be made by the board in accord-
34 ance with the approved financial plan except as provided in subdivision
35 five of this section nine. Commencing on October twentieth, nineteen
36 hundred seventy-five, and for the duration of a control period, all
37 funds and accounts established or thereafter established by the city,
38 the city of Staten Island or the covered organizations shall, unless
39 exempted by order of the board, thereafter be funds and accounts of the
40 board fund except to the extent expressly prohibited by federal law or
41 to the extent pledged by covenants or agreements relating to any
42 outstanding bonds, notes or other obligations of covered organizations
43 or public authorities as defined in section two hundred one of the civil
44 service law; and no monies or funds held in the general debt service
45 fund, the TAN debt service account or the RAN debt service account shall
46 be part of the board fund. All such accounts of the board shall have
47 such captions and entries as the board shall determine to be necessary
48 to credit the foregoing revenues and receipts to the board fund. The
49 monies of the fund shall not be deemed to be money of the state or money
50 under its control.

51 2. The deposit of revenues into the board fund and the investment or
52 deposit of monies therein shall be made in accordance with and pursuant
53 to procedures established by the board.

54 3. In order to assure compliance with the financial plan, the board
55 shall from time to time adopt procedures controlling the disbursement of
56 monies from the board fund. The board shall authorize the city or, if

1 applicable, the city of Staten Island to make all disbursements of
2 [~~city~~] such entity's revenues from the board fund, which disbursements
3 shall be made in accordance with the approved financial plan; provided,
4 that the board may withdraw such authorization if it determines that (a)
5 any disbursements made or to be made by the city or, if applicable, the
6 city of Staten Island have not been or are likely not to be in compli-
7 ance with the approved financial plan, (b) the city or, if applicable,
8 the city of Staten Island has violated any other provisions of this act,
9 or (c) the city has violated an agreement with any holder or guarantor
10 of bonds or notes issued by the city or a state financing agency.

11 4. Within the board fund there is hereby established a special
12 account designated the debt service repayment account. The board shall
13 from time to time direct, in accordance with procedures adopted by the
14 board, the deposit in the debt service repayment account of such amounts
15 as the board shall, in its discretion, determine to be sufficient to
16 meet the debt service requirements of the covered organizations on their
17 bonds and notes (other than bonds and notes of covered organizations
18 payable from revenues not included in the board fund) as they become
19 due. Amounts in the debt service repayment account shall be used to
20 meet such debt service requirements of the covered organizations.

21 5. If at any time the board determines that the amount then held in
22 the board fund or the amount estimated by the board to be held in the
23 board fund is or will be insufficient to meet the expenditures in the
24 amounts and at the times required by the financial plan, the board shall
25 require disbursements from the board fund to be made in the following
26 order or priority unless otherwise required by law of the United States
27 of America: (i) the payment of amounts from the appropriate account of
28 the board fund to the debt service repayment account, the general debt
29 service fund, the TAN debt service account and the RAN debt service
30 account, to maintain therein the amount required, to meet debt service
31 requirements of the city, the city of Staten Island, if appropriate and
32 the covered organizations on their bonds and notes as they may become
33 due, (ii) the payment of other liabilities having statutory or contrac-
34 tual priority over remaining liabilities of the city, the city of
35 Staten Island, if appropriate and the covered organizations whose monies
36 are included in the board fund, and (iii) the payment of other obli-
37 gations on an allocated basis as specified by the city or, the city of
38 Staten Island, if appropriate, for expenditures in accordance with the
39 financial plan provided that, in the event that the city or, the city of
40 Staten Island, if appropriate, fails to so specify, the board may with-
41 hold payment of any of such other obligations or may direct their
42 payment pro rata.

43 6. The board shall cause to be performed such pre-audit and post-au-
44 dit reviews of the board funds and disbursements therefrom as it may
45 determine.

46 § 12-019. Section 9-a of section 2 of chapter 868 of the laws of 1975,
47 constituting the New York state financial emergency act for the city of
48 New York, as added by chapter 201 of the laws of 1978, subdivisions 1,
49 2, 3, 4, 6, 7, 8, 9 and 11 as amended, subdivision 10 as renumbered and
50 amended and subdivision 12 as added by chapter 777 of the laws of 1978,
51 is amended to read as follows:

52 § 9-a. Establishment and application of a general debt service fund.
53 1. Commencing on the first day of the first full fiscal quarter subse-
54 quent to the first sale of a federally guaranteed city obligation, the
55 city shall establish a general debt service fund for the purpose of
56 paying debt service due or becoming due in the then current fiscal year

1 and in subsequent fiscal years until the later of (i) the termination
2 date of this act or (ii) the date when all general obligation bonds of
3 the city outstanding as of the establishment of the city of Staten
4 Island have been paid or payment therefor has been provided for in
5 accordance with their terms. All monies in the fund shall be held by
6 the comptroller, who shall administer and maintain the fund in accord-
7 ance with the provisions of this section.

8 2. All payments of or on account of real estate taxes or assessments
9 due to the city or the city of Staten Island, other than the proceeds of
10 tax anticipation notes, shall be immediately upon receipt deposited in
11 an account designated for the municipality to which payment was due
12 established in such fund. The comptroller shall retain, disburse and
13 apply monies in the fund during each month as follows:

14 a. During the first month of each fiscal quarter, there shall be
15 retained in the fund, subject to the provisions of subdivision three of
16 this section, all real estate tax payments deposited in the fund until
17 there shall have been retained from monies so deposited during such
18 month in the applicable account an amount equal to the total monthly
19 debt service, computed as of the date of any disbursement of money from
20 the fund, for the second and third months of such fiscal quarter;
21 provided that such amount shall be reduced by any amount already on
22 deposit in the fund which may be used to pay the monthly debt service
23 for such months.

24 Amounts to be on deposit in such accounts shall be determined as
25 follows: (i) with respect to the account of the city, debt service shall
26 include payments with respect to (a) all bonds and notes of the city
27 issued on or after the date of establishment of the city of Staten
28 Island and (b) all bonds or notes of the city prior thereto multiplied
29 by a fraction, the numerator of which is the total assessed valuation of
30 all taxable real property located in the city as of the date of such
31 establishment and the denominator of which is the total assessed valu-
32 ation of all taxable real property located in the city and the city of
33 Staten Island combined as of the date of such establishment and (ii)
34 with respect to the account of the city of Staten Island, debt service
35 shall include payments with respect to (a) all bonds or notes of the
36 city of Staten Island and (b) all bonds or notes of the city issued
37 prior to the establishment of the city of Staten Island multiplied by a
38 fraction, the numerator of which is the total assessed valuation of all
39 taxable real property located in the city of Staten Island as of the
40 date of such establishment and the denominator of which is the same as
41 in clause (b) of subparagraph (i) of this paragraph. To the extent
42 either account contains insufficient amounts to make payments on the
43 respective allocable portion of city bonds or notes issued prior to the
44 establishment of the city of Staten Island and such municipalities own
45 bonds or notes issued subsequent thereto, amounts on deposit in the
46 account of the other municipality in excess of the amounts required to
47 provide for payment of such latter municipality's own bonds or notes
48 issued subsequent to such establishment and allocable portion of city
49 bonds or notes issued prior thereto, shall be retained in such account
50 and applied to the payment of bonds or notes of the city issued prior to
51 such establishment to the extent of any insufficiency in such accounts.

52 For purposes of this section, fiscal quarter shall mean the three-
53 month period beginning July first, October first, January first or April
54 first, and monthly debt service shall mean, as of any date of computa-
55 tion, the amount of monies equal to the aggregate of (i) all interest
56 payable during such month on bonds and notes of the city or the city of

1 Staten Island, as applicable, plus (ii) the amount of principal (includ-
2 ing payments into sinking funds) maturing or otherwise coming due during
3 such month on all bonds of the city or the city of Staten Island, as
4 applicable, (excluding principal payments made from sinking funds
5 required by the terms of certain city or the city of Staten Island, as
6 applicable, bonds), plus (iii) the amount of principal to be paid on
7 notes of the city or the city of Staten Island, as applicable, during
8 such month from sources other than the proceeds of bonds or renewal
9 notes (exclusive of revenue anticipation notes and tax anticipation
10 notes or renewals thereof issued less than two years prior to the date
11 of computation).

12 b. During the second and third months of each fiscal quarter, there
13 shall be retained in the fund, subject to the provisions of subdivision
14 three of this section, all real estate tax payments deposited in the
15 fund until there shall have been retained from monies so deposited
16 during such month an amount equal to the total monthly debt service,
17 computed as of the date of any disbursement of monies from the fund, for
18 the first month of the next succeeding fiscal quarter; provided that
19 such amount shall be reduced by any amount already on deposit in the
20 fund which may be used to pay the monthly debt service for such month.

21 c. During any month of a fiscal quarter, after the retentions
22 required by paragraphs a and b of this subdivision have been made for
23 such month, the comptroller shall deposit any remaining balance of real
24 estate taxes received during such month, first into the TAN debt service
25 account to the extent required under subdivision six of this section,
26 and second into the board fund to be applied in accordance with proce-
27 dures of the board.

28 d. The city may at any time pay into the fund any monies required by
29 law to be used to pay monthly debt service and any other monies avail-
30 able for such purpose.

31 3. The board may approve, subject to agreements made with the holders
32 or guarantors of outstanding notes or bonds issued by or for the benefit
33 of the city after the effective date of this act, criteria for calculat-
34 ing a proportion of real estate tax receipts to be retained in the fund
35 in order to provide for the retention of amounts required by the
36 provisions of subdivision two of this section in lieu of the retention
37 of all initial receipts as required by such subdivision; provided, that
38 if the board at any time determines that retentions in the fund pursuant
39 to the provisions of such subdivision are or are likely to be insuffi-
40 cient to provide for the payment of monthly debt service when due, in
41 order to ensure that the amounts on deposit in the fund will be suffi-
42 cient to pay monthly debt service when due, the board shall require (i)
43 that real estate tax receipts be retained in the fund in greater amounts
44 or at earlier dates than the provisions of such subdivision require, or
45 (ii) that other revenues or cash resources of the city be paid into the
46 fund. The board shall consider the impact of earlier or larger
47 retention of real estate tax receipts on the city's seasonal borrowing
48 requirements when determining whether it shall require such additional
49 retention or that other revenues or cash resources of the city be paid
50 into the fund. Prior to the issuance by the city of any bonds or notes,
51 the board shall review any criteria then in effect which determine the
52 proportion of real estate tax receipts to be retained in the fund to
53 determine whether the proposed debt service schedule for such bonds or
54 notes is consistent with the monies which will be available therefor or
55 whether such criteria should be revised. The board shall from time to
56 time take such action as it determines is necessary, including disap-

1 proval of a proposed issue pursuant to paragraph f of subdivision one of
2 section seven, so that the monies in the fund shall be adequate to meet
3 debt service requirements.

4 4. Commencing on the first day of the second month of the first full
5 fiscal quarter subsequent to the first sale of a federally guaranteed
6 city obligation, the payment of monthly debt service shall be made,
7 first, from amounts retained in the fund. Amounts retained in the fund
8 shall be used only to pay debt service of the city.

9 5. Upon the issuance of any tax anticipation notes following the
10 effective date of this act, the comptroller shall establish and, so long
11 as any tax anticipation notes shall be outstanding, shall maintain a tax
12 anticipation note debt service account within the fund for the purpose
13 of paying the principal of tax anticipation notes.

14 6. The city shall determine the date on which the principal due or to
15 become due on an outstanding issue of tax anticipation notes shall equal
16 ninety percent of the available tax levy with respect to such issue, and
17 upon reasonable notice thereof the comptroller shall commence on such
18 date to pay into the TAN debt service account from collections of such
19 taxes and assessments, after retaining amounts required to be deposited
20 in the fund, amounts sufficient to pay when due, the principal of such
21 issue of tax anticipation notes. The payments of the principal of tax
22 anticipation notes shall be made, first, from amounts retained in the
23 TAN debt service account.

24 7. Upon the issuance of any revenue anticipation notes following the
25 effective date of this act, the comptroller shall establish and, so long
26 as any revenue anticipation notes shall be outstanding, shall maintain a
27 revenue anticipation note debt service account within the fund for the
28 purpose of paying the principal of revenue anticipation notes. Each
29 specific type of revenue in anticipation of which such notes are issued
30 and available for such purpose shall be deposited in such account imme-
31 diately upon receipt by the city. Where such revenue consists of state
32 aid or other revenue to be paid to the city by the comptroller, on the
33 date such revenue is payable to the city, the comptroller shall deposit
34 such revenue directly into such account in lieu of payment to the city.
35 All revenues deposited in the RAN debt service account shall be paid
36 immediately into the board fund except as otherwise provided in subdivi-
37 sion eight of this section.

38 8. The city shall determine the date on which the principal due or to
39 become due on an outstanding issue of revenue anticipation notes shall
40 equal ninety percent of the total amount of revenue against which such
41 notes were issued remaining to be paid to the city on or before the
42 fifth day prior to the maturity date of such notes and upon reasonable
43 notice thereof the comptroller shall commence on such date to retain in
44 the RAN debt service account from amounts deposited or to be deposited
45 therein of each specific type of revenue in anticipation of which reven-
46 ue such anticipation notes were issued, an amount sufficient to pay,
47 when due, the principal of such revenue anticipation notes. Monies
48 retained in such account shall vest immediately in the comptroller in
49 trust for the benefit of the holders of the revenue anticipation notes
50 in anticipation of which such notes were issued. No person having any
51 claim of any kind in tort, contract or otherwise against such city shall
52 have any right to or claim against any monies of the state appropriated
53 by the state and in anticipation of which such notes have been issued,
54 other than a claim for payment by the holders of such notes, and such
55 monies shall not be subject to any order, judgment, lien, execution,
56 attachment, setoff or counter-claim by any such person; provided, howev-

1 er, that nothing contained in this paragraph shall be construed to
2 limit, impair, impede or otherwise adversely affect in any manner the
3 rights or remedies of the purchasers and holders and owners of any bonds
4 or notes of the state or any agency, instrumentality, public benefit
5 corporation or political subdivision thereof, including the city of New
6 York, under which such purchasers and holders and owners have any right
7 of payment of such bonds or notes by recourse to state aid or local
8 assistance monies held by the state or for the payment of which bonds or
9 notes state aid or local assistance monies are a designated source. The
10 payment of the principal of revenue anticipation notes shall be made
11 first from amounts retained in the RAN debt service account.

12 9. Whenever the amount contained in the TAN debt service account or
13 the RAN debt service account exceeds the amount required to be retained
14 in such account such excess monies, including earnings on investments of
15 monies in the fund, shall be withdrawn from such account and paid into
16 the board fund.

17 10. Subject to agreements made with holders or guarantors of
18 outstanding notes or bonds issued by or for the benefit of the city
19 after the effective date of this act, the comptroller shall invest the
20 monies retained in the fund in accordance with law.

21 11. The limitations imposed upon the city by this section shall be in
22 addition to any limitations imposed upon the city or the city of Staten
23 Island under the local finance law. In the event any provisions of the
24 local finance law shall be inconsistent with the provisions of this
25 section, the provisions of this section shall prevail. The requirements
26 of this section shall not apply to any note of the city held by the
27 municipal assistance corporation for the city of New York to the extent
28 that such corporation has evidenced its intention not to present such
29 notes for payment during the fiscal year in which the determination is
30 made provided that such notes were held by such corporation on June
31 thirtieth, nineteen hundred seventy-eight or were issued in exchange for
32 or in refunding or renewal of notes held by such corporation on such
33 date.

34 12. Notwithstanding any other provision of this section, the city and
35 the city of Staten Island, if applicable, may, at any time, subject to
36 approval by the comptroller, designate a trust company or bank having
37 its principal place of business in the state of New York and having the
38 powers of a trust company in the state of New York to hold all or any
39 part of the monies in the fund and to administer and maintain the monies
40 so held in accordance with the applicable provisions of this section and
41 any agreements made pursuant thereto.

42 § 12-020. Section 11 of section 2 of chapter 868 of the laws of 1975,
43 constituting the New York state financial emergency act for the city of
44 New York, subdivisions 1 and 3 as amended by chapter 777 of the laws of
45 1978, is amended to read as follows:

46 § 11. Prohibitions; penalties. 1. During a control period, (i) no
47 officer or employee of the city or of any of the covered organizations
48 or to the extent the board deems necessary or desirable to accomplish
49 the purposes of this act, the city of Staten Island shall make or
50 authorize an obligation or other liability in excess of the amount
51 available therefor under the financial plan as then in effect; (ii) no
52 officer or employee of the city or of any of the covered organizations
53 or the city of Staten Island shall involve the city, the city of Staten
54 Island, if applicable or any of the covered organizations in any
55 contract or other obligation or liability for the payment of money for
56 any purpose required to be approved by the board unless such contract,

1 obligation or liability has been so approved or deemed to be approved as
2 provided in paragraphs e and f of subdivision one of section seven and
3 unless such contract or obligation or liability is in compliance with
4 the financial plan as then in effect.

5 2. No officer or employee of the city or any of the covered organiza-
6 tions, or, the city of Staten Island, if applicable, shall take any
7 action in violation of any valid order of the board or shall fail or
8 refuse to take any action required by any such order or shall prepare,
9 present or certify any information (including any projections or esti-
10 mates) or report for the board or any of its agents that is false or
11 misleading, or, upon learning that any such information is false or
12 misleading, shall fail promptly to advise the board or its agents there-
13 of.

14 3. In addition to any penalty or liability under other law, any offi-
15 cer or employee of the city or any of the covered organizations, or, the
16 city of Staten Island, if applicable, who shall knowingly and willfully
17 violate subdivision one or two of this section shall be subject to
18 appropriate administrative discipline, including, when circumstances
19 warrant, suspension from duty without pay or removal from office by
20 order of either the governor or the mayor or the mayor of the city of
21 Staten Island, if applicable, and shall, upon conviction, be guilty of a
22 misdemeanor.

23 4. In the case of a violation of subdivision one or two of this
24 section by an officer or employee of the city, or, the city of Staten
25 Island, if applicable, or any of the covered organizations, the mayor or
26 the mayor of the city of Staten Island, if applicable, or the chief
27 executive officer of such covered organization shall immediately report
28 to the board all pertinent facts together with a statement of the action
29 taken thereon.

30 § 13-001. Section 25-a of the general city law is amended by adding a
31 new undesignated paragraph to read as follows:

32 For the purposes of this article, a city which is incorporated on or
33 after the first of January next succeeding the date on which this para-
34 graph shall have become a law and which is comprised of a geographical
35 area which on the date immediately prior to such incorporation had been
36 wholly contained within a city with a population of one million or more
37 shall continue to be treated as a city with a population of one million
38 or more.

39 § 13-002. Section 25-w of the general city law is amended by adding a
40 new subdivision (g) to read as follows:

41 (g) For the purposes of this article, a city which is incorporated on
42 or after the first of January next succeeding the date on which this
43 subdivision shall have become a law and which is comprised of a
44 geographical area which on the date immediately prior to such incorpo-
45 ration had been wholly contained within a city with a population of one
46 million or more shall continue to be treated as a city with a population
47 of one million or more.

48 § 13-003. Section 1 of chapter 772 of the laws of 1966 relating to
49 imposition of a city business tax is amended by adding a new undesign-
50 ated paragraph to read as follows:

51 For the purposes of this section, a city which is incorporated on or
52 after the first of January next succeeding the date on which this para-
53 graph shall have become a law and which is comprised of a geographical
54 area which on the date immediately prior to such incorporation had been
55 wholly contained within a city with a population of one million or more

1 shall continue to be treated as a city with a population of one million
2 or more.

3 § 13-004. Section 2 of chapter 772 of the laws of 1966 relating to
4 imposition of a city business tax is amended by adding a new undesig-
5 nated paragraph to read as follows:

6 For the purposes of this section, a city which is incorporated on or
7 after the first of January next succeeding the date on which this para-
8 graph shall have become a law and which is comprised of a geographical
9 area which on the date immediately prior to such incorporation had been
10 wholly contained within a city with a population of one million or more
11 shall continue to be treated as a city with a population of one million
12 or more.

13 § 13-005. Section 1301 of the tax law is amended by adding a new
14 subsection (f) to read as follows:

15 (f) For the purposes of this article, a city which is incorporated on
16 or after the first of January next succeeding the date on which this
17 subsection shall have become a law and which is comprised of a geograph-
18 ical area which on the date immediately prior to such incorporation had
19 been wholly contained within a city with a population of one million or
20 more shall continue to be treated as a city with a population of one
21 million or more.

22 § 14-001. The administrative code of the city of Staten Island is
23 enacted to read as follows:

24 Title 6 - General Services and Contracting

25 § 6-101 Definitions. As used in this title:

26 1. "Commissioner" shall mean the commissioner of the department of
27 general services and contracting.

28 2. "Department" shall mean the department of general services and
29 contracting.

30 § 6-102 Commissioner. The head of the department shall be the commis-
31 sioner.

32 § 6-103 Powers and duties. The commissioner shall have the power and
33 it shall be his or her duty to perform all the functions and operations
34 of the city of Staten Island relating to the construction, maintenance
35 and care of public buildings and facilities; the procurement of goods
36 and other personal property; the disposition of surplus property; the
37 providing to city agencies of services other than personal services; the
38 acquisition, disposition and management by the city of real property
39 other than housing; the providing of automotive, communication, energy
40 and data processing services including without limitation:

41 1. Procurement of goods, other personal property and services. With
42 respect to the procurement and disposal of goods and other personal
43 property and the procurement of services other than personal services,
44 the commissioner shall have the following power and duties:

45 (a) to purchase, inspect, store and distribute all goods, supplies,
46 materials, equipment and other personal property required by any city
47 agency, except as otherwise provided by law, or by any office of any
48 county wholly included in the city for which supplies, materials or
49 equipment are required, payment for which is made from the city treas-
50 ury;

51 (b) to establish and maintain one or more city storehouses, operating
52 therein a modern system of stores control to supply the estimated
53 current needs of the agencies for which the commissioner is authorized
54 to purchase. All purchases other than such purchases for stock for
55 estimated needs and all deliveries from such stock shall be upon justi-
56 fied requisitions. The commissioner shall also oversee the establish-

1 ment of efficient and economical systems of stores control in other city
2 agencies and review the operations of such storehouses to assure their
3 efficient and economical management;

4 (c) to receive all surplus and obsolete personal property not required
5 by any agency for which the commissioner has the power to make purchases
6 and all such agencies shall surrender such property to the commissioner
7 who shall dispose thereof pursuant to rules promulgated by him or her
8 governing its redistribution, exchange, transfer, sale or other disposi-
9 tion;

10 (d) to procure, supply and manage contractual services other than
11 personal or professional services for the use of city agencies;

12 (e) to promulgate rules governing the purchase, payment, storage, and
13 delivery of goods, supplies, materials and equipment by agencies of the
14 city and the disposal of surplus and obsolete materials, and to super-
15 vise their enforcement; and

16 (f) to classify all goods, supplies, materials and equipment.

17 2. Energy; gas and electricity. The commissioner shall have charge and
18 control of furnishing the city or any part thereof, by contract or
19 otherwise, with gas, electricity, steam, hot water or other energy
20 source, except such functions as are exercised by the public utility
21 service of the city.

22 3. Data processing services; information technology and telecommuni-
23 cations. (a) For purposes of this title "telecommunications" shall mean
24 transmission of writings, signals, pictures, numbers and sounds or
25 intelligence of all kinds by and of wire, cable, optical fiber, radio,
26 satellite, electromagnetic wave, microwave or other like connection
27 between points of origin and reception of such transmission, including
28 all instrumentalities, facilities, apparatus and services incidental to
29 such transmission.

30 (b) The commissioner shall provide data processing support, program-
31 ming, and computer systems analysis services for city agencies when
32 necessary or desirable, in accordance with executive orders promulgated
33 by the mayor.

34 (c) In addition, the commissioner shall have further powers and
35 duties:

36 (i) to plan, formulate, coordinate and advance information technology
37 and telecommunications policy for the city;

38 (ii) to develop, maintain and implement a long range telecommuni-
39 cations strategy;

40 (iii) to administer, subject to the approval of the council where
41 applicable, all franchises and revocable consents relating to telecommu-
42 nications including without limitation, proposing authorizing resol-
43 utions for telecommunications, franchises, developing and issuing
44 requests for proposals or other solicitations of proposals for telecom-
45 munications franchises, selecting telecommunications franchises, review-
46 ing and approving petitions for revocable consents relating to telecom-
47 munications, negotiating the terms of contracts or other agreements
48 relating to telecommunications franchises and revocable consents,
49 enforcing the terms and conditions of such agreements;

50 (iv) to develop municipal uses of cable television and coordinate
51 interagency uses of cable television and other telecommunications;

52 (v) to ensure that priority is given on at least one municipal channel
53 to the cable casting of the public proceedings of the council and its
54 committees, the city planning commission and other state and city agen-
55 cies;

1 (vi) to provide to city agencies such land-based and wireless voice,
2 data, video or other communication facilities, and technical assistance
3 or other assistance with respect to such facilities, as they may require
4 for the effective discharge of their responsibilities;

5 (vii) to participate in developing, maintaining and implementing a
6 long-range computer system and data communications strategy for the
7 city;

8 (viii) to assist in providing interagency coordination on matters
9 related to data communications activities and interfacing of computers;

10 (ix) to provide appropriate, reliable, cost-effective and responsive
11 computer and data communications services to agencies that require such
12 services by purchasing and maintaining hardware, software and such other
13 goods and services as may be necessary to effectively discharge the
14 powers and duties of the department;

15 (x) to provide assistance to agencies in meeting their data processing
16 and data communications objectives;

17 (xi) to provide agencies using or proposing to use the services of
18 this department with technical assistance in determining feasibility and
19 resource requirements;

20 (xii) to simplify access to shared information, reduce communication
21 costs and provide access to multiple computer systems by connecting
22 computers and terminals of various city agencies, and of other public
23 entities requesting such connection where such provision to such other
24 entities would in the judgment of the commissioner be in the city's
25 interests;

26 (xiii) to plan and provide telecommunications coordination in support
27 of disaster recovery;

28 (xiv) to ensure security for data and other information handled by
29 this department;

30 (xv) to institute procedures to assure restrictions of access to
31 information to the appropriate individuals, where such restrictions are
32 required by law; and

33 (xvi) to perform such other responsibilities with respect to informa-
34 tion technology and telecommunications matters, including responsibil-
35 ities delegated elsewhere by the code, as the mayor shall direct.

36 4. Automotive services. The commissioner shall acquire by purchase,
37 lease or otherwise, vehicles and other automotive equipment for the use
38 of city agencies; manage, maintain, store and operate a fleet of motor
39 vehicles; assign fleets to agencies in accordance with the direction of
40 the mayor and ensure the effective operation of all shops, yards,
41 garages, fuel depots and other facilities required for the maintenance
42 of fleets operated by agencies; and ensure the maintenance of records
43 for all city owned vehicles.

44 5. Right of entry. The commissioner, officers and employees of the
45 department may, in accordance with law, enter upon public or private
46 property for the purpose of making surveys, borings or other investi-
47 gations necessary for the exercise of powers or the performance of the
48 duties of the commissioner and the department. Refusal to permit such
49 entry shall be a misdemeanor punishable by not more than thirty days
50 imprisonment or by a fine of not more than \$50.00, or both.

51 § 6-104 Emergency communications systems of other agencies. With
52 respect to emergency communications systems and emergency communications
53 facilities administered by another agency or another municipality, the
54 department shall exercise its powers and duties only as the mayor shall
55 direct or at the request of such agency.

1 § 6-105 Records and information services. Within the department there
2 shall be a division of records and information services which shall
3 include, but not be limited to, municipal archives, a municipal refer-
4 ence and research center and a municipal records management division.

5 1. The division shall be responsible for the maintenance, access to
6 and preservation of records of the city. In addition, the division shall
7 develop and promulgate standards and procedures to effectively perform
8 those duties.

9 The division shall provide appropriate information and assistance to
10 the mayor and to members of the council. It shall also provide, within
11 reasonable limits, access to the public to records, books and documents
12 within its care and control.

13 2. The division is authorized to arrange for the exchange, sale,
14 purchase and loan of information materials from and with legislative
15 research services, libraries and institutions in other municipalities,
16 governmental bodies and public authorities.

17 3. The division shall:

18 (a) provide for the distribution of publications of the city, where
19 such authority is not vested in another city agency, and issue at regu-
20 lar intervals, no less than quarterly, a bulletin describing its facili-
21 ties and resources;

22 (b) institute actions in replevin to recover any historical and/or
23 other documents properly owned by, or originating from, the county of
24 Richmond prior to the creation of the preceding municipality;

25 (c) report annually by the thirtieth of September to the mayor, and
26 council on the powers and duties herein-mentioned including, but not
27 limited to, the cost of savings effectuated by the division during the
28 preceding fiscal year.

29 § 6-106 Departmental libraries. The commissioner shall analyze the
30 needs of each city agency, except the law department, with respect to
31 the establishment and maintenance of any library or research facility
32 therein, and make such recommendations as may be appropriate in the
33 circumstances. Any libraries or research facilities so established
34 shall, among any of its other duties, be responsible for the mainte-
35 nance, access to and preservation of records within its care and
36 control.

37 Title 7 - Legal Affairs

38 § 7-102 Department; corporation counsel. 1. There shall be a law
39 department the head of which shall be the corporation counsel.

40 2. The first assistant corporation counsel, appointed by the corpo-
41 ration counsel, during absence, disability or the vacancy of the office
42 of the corporation counsel, shall assume all powers and perform all
43 duties of the corporation counsel and shall act as corporation counsel
44 until a new appointment is made.

45 3. The corporation counsel may empower, by written authority filed
46 and remaining on record in the department, any of the assistants to
47 perform certain duties of the corporation counsel.

48 § 7-103 Powers and duties. The corporation counsel shall:

49 1. be attorney and counsel for the city and every agency thereof and
50 shall have charge of and conduct all the law business of the city and
51 its agencies;

52 2. have charge of and conduct the legal proceedings necessary in open-
53 ing, widening, altering and closing streets and in acquiring real estate
54 or in city condemnation proceedings;

55 3. have charge of and conduct the preparation of all leases, deeds,
56 contracts, bonds and all other legal papers for the city or connected

1 agency or officer thereof; and the corporation counsel shall approve the
2 form of all such deeds, bonds, contracts, leases and legal papers;

3 4. have the right to institute actions in law or equity to maintain,
4 defend and establish the rights, interests, revenues, property, privi-
5 leges, franchises or demands of the city or the people thereof, and to
6 collect any money, debts, fines or penalties or enforce the laws;

7 5. not be empowered to compromise, settle or adjust any rights,
8 claims, demands or causes of action in favor of or against the city, to
9 offer or confess judgment against the city or accept any offer of judg-
10 ment in favor of the city without the approval of the comptroller; and

11 6. have the authority to assign one or more assistants to any agency;
12 and the head of each agency may employ staff counsel to assist in legal
13 affairs of the agency.

14 § 7-104 Legal authority. 1. All actions and proceedings for the
15 recovery of penalties for the violation of any law shall be brought in
16 the name of the city and not in that of any agency.

17 2. The mayor may delegate to any agency, after consultation with the
18 corporation counsel and head of the agency, responsibility for the
19 conduct of routine legal affairs of the agency.

20 3. The mayor may assign or transfer attorneys from the law department
21 of the agency to assist in such delegated functions.

22 4. The corporation counsel shall monitor and evaluate on a regular
23 basis the exercise of authority delegated.

24 5. The mayor, upon recommendation of the corporation counsel, may
25 suspend or withdraw any delegated authority whenever in his or her judg-
26 ment the interests of the city justify such action.

27 § 7-105 City sheriff; powers and duties. 1. There shall be a city
28 sheriff who shall be appointed by the mayor.

29 2. Except as otherwise provided by law, the functions, powers and
30 duties formerly exercised by the sheriff of the preceding municipality
31 as of the date of establishment of the city of Staten Island shall
32 remain with the city sheriff.

33 § 7-106 City clerk; powers and duties. The city clerk shall:

34 1. be the chief archivist of the city and shall advise the mayor and
35 council on those matters concerning the preservation of the city's
36 historical documentation;

37 2. act as the chief reference and research librarian for the mayor and
38 council and shall ensure that all significant materials pertaining to
39 operations of the city be preserved and readily available for use;

40 3. act as the chief public records officer for the mayor and council
41 and shall, except as otherwise provided by law, establish standards for
42 the proper records management in any agency or government instrumentali-
43 ty funded in whole or in part from local tax levy monies; and

44 4. have the power formerly exercised or delegate any of the functions
45 and duties vested in such city clerk by law of the preceding munici-
46 pality as it existed on the date of establishment.

47 Title 8 - Reserved

48 Title 9 - Criminal Justice

49 Chapter 1

50 Department of Corrections

51 § 9-101 Definitions. As used in this title:

- 1 1. "Commissioner" shall mean the commissioner of the department of
2 corrections.
- 3 2. "Department" shall mean the department of corrections.
- 4 3. "Division" shall mean the division of juvenile justice.
- 5 § 9-102 Commissioner. The head of the department shall be the commis-
6 sioner of corrections.
- 7 § 9-103 Powers and duties of commissioner. 1. The commissioner shall
8 have:
- 9 a. charge and management of all institutions of the city (including
10 all hospital wards) for the care and custody of felons; misdemeanants;
11 all prisoners under arrest and waiting arraignment (including those who
12 require hospital care and/or psychiatric observation or treatment);
13 violators of ordinances or local laws and for the detention of any
14 witnesses who are unable to furnish security for their appearance in
15 criminal proceedings;
- 16 b. sole power and authority concerning the care, custody and control
17 of all court pens for the detention of prisoners while in custody of the
18 state of New York within the city of Staten Island, the family court of
19 the state of New York, the supreme court in the county of Richmond and
20 of all vehicles employed in the transportation of prisoners who have
21 been sentenced, are awaiting trial or being held for other cause;
- 22 c. charge and management of persons or any other institution of the
23 city placed under his or her jurisdiction;
- 24 d. all authority concerning the care and custody of felons, misdemea-
25 ants or violators of local laws held in institutions under his or her
26 jurisdiction;
- 27 e. all authority in relation to the custody and transportation of
28 persons held for any criminal proceedings, all prisoners under arrest
29 and waiting arraignment (including those requiring hospital care and/or
30 psychiatric treatment) in the city; and
- 31 f. supervision and responsibility for the planning and implementation
32 of re-training, counseling, and rehabilitative programs for felons,
33 misdemeanants and violators of local laws who are held in institutions
34 under his or her charge.
- 35 2. The commissioner shall maintain and operate buildings and struc-
36 tures under his or her jurisdiction and may construct additions and make
37 repairs to such buildings by use of the labor of persons under his or
38 her care and custody.
- 39 § 9-104 Labor of prisoners. 1. Every inmate of an institution under
40 the authority of the commissioner shall be employed in some form of
41 industry, farming operations or other employment and any products there-
42 of shall be utilized in the institutions under the commissioner's juris-
43 diction.
- 44 2. Any persons held for trial may be employed in the same manner as
45 sentenced prisoners; however, such sentenced prisoners must give their
46 consent in writing.
- 47 3. Inmates and/or prisoners held for trial may be detailed by the
48 commissioner to perform work or service on the grounds, buildings, or on
49 any public improvement under the charge of any other agency.

50

Chapter 2

51

Division of Juvenile Justice

52 § 9-201 The division of juvenile justice; director. 1. There shall be
53 within the department of corrections a division of juvenile justice.

1 2. The head of the division shall be the director of juvenile justice.

2 § 9-202 Powers and duties of director. The director shall:

3 1. establish, initiate, control, maintain and operate secure and non-
4 secure facilities for the temporary care and maintenance of children
5 alleged to be or adjudicated as juvenile delinquents.

6 2. have the power to contract with other public and private agencies
7 for services in order to ensure adequate, suitable and accessible accom-
8 modations and that proper care will be available when required for
9 detention.

10 3. establish regulations for the operation of secure and non-secure
11 detention facilities and shall provide or secure the availability of
12 accessible and adequate non-secure detention facilities certified by
13 the state division of youth.

14 4. develop, implement and maintain systems to collect, store and
15 disseminate information concerning juvenile delinquency, juvenile crime
16 and the juvenile justice system.

17 5. participate with other city agencies in development, implementation
18 and maintenance of juvenile justice information.

19 Title 10 - Reserved

20 TITLE 11

21 TAXATION AND FINANCE

22 CHAPTER 1

23 DEPARTMENT OF FINANCE

24 § 11-001 Definitions and applicability. Any terms in this title refer-
25 ring to a governmental entity of the preceding municipality shall be
26 deemed to refer to such entity of the preceding municipality or its
27 successor entity under the city of Staten Island. Any action taken in
28 compliance with the provisions of this title prior to the incorporation
29 of the city of Staten Island shall be deemed to comply with the require-
30 ments of this title. For the purposes of this title, the term preceding
31 municipality shall mean the city government for the geographical area of
32 the city of Staten Island which existed immediately prior to the incor-
33 poration of the city of Staten Island.

34 § 11-101 Power of department of finance to adopt a seal. The depart-
35 ment of finance is authorized to adopt a seal.

36 § 11-102 Finance department; records; copies when in evidence. A
37 copy of any paper, record, book, document or map, filed in the depart-
38 ment of finance, or the minutes, records or proceedings, or any portion
39 thereof, of any board or commission of which the commissioner of
40 finance, is or may become a member, when certified by the commissioner
41 of finance, or a deputy commissioner of finance, to be a correct copy of
42 the original, shall be admissible in evidence in any trial, investi-
43 gation, hearing or proceeding in any court, or before any commissioner,
44 board or tribunal, with the same force and effect as the original.
45 Whenever a subpoena is served upon the commissioner of finance, or any
46 member of a board or commission of which the commissioner of finance is
47 a member, or upon any officer or employee of the department of finance,
48 or upon any officer or employee of such boards or commissions, requiring
49 the production upon any trial or hearing of an original paper, document,
50 book, map, record, minutes or proceedings, the commissioner of finance,
51 in his or her discretion, may furnish a copy certified as herein
52 provided, unless the subpoena be accompanied by an order of the court or
53 other tribunal before which trial or hearing is had requiring the
54 production of such original.

55 § 11-102.1 Authorization to require identifying numbers. a. The
56 commissioner of finance in the proper discharge of his or her duties in

1 the administration and collection of taxes, assessments, arrears or
2 other charges payable to the city may require any person to furnish such
3 identifying number as the commissioner may prescribe for securing proper
4 identification of such person including, but not limited to, a social
5 security account number or federal employer identification number.

6 b. Any person who fails to supply such identifying number within thir-
7 ty days after written demand therefor shall be liable for a civil penal-
8 ty of not more than one thousand dollars. Upon application in writing
9 and for good cause shown, the commissioner of finance may extend the
10 time for compliance with such written demand.

11 c. The civil penalty prescribed by this section shall be recovered by
12 the corporation counsel in an action or proceeding in any court of
13 competent jurisdiction. In addition, the corporation counsel may insti-
14 tute any other action or proceeding in any court of competent jurisdic-
15 tion that may be appropriate or necessary for the enforcement of the
16 provisions of this section.

17 § 11-103 Bond of commissioner of finance. The commissioner of
18 finance, within ten days after receiving notice of his or her appoint-
19 ment and before such commissioner enters upon his or her office, shall
20 give a bond to the city and to the people of the state of New York in
21 the sum of three hundred thousand dollars, with not less than four
22 sufficient sureties to be approved by the comptroller, conditioned that
23 he or she will faithfully discharge the duties of the commissioner's
24 office and all trusts imposed on him or her by law in virtue of the
25 commissioner's office, including all duties in connection with the tax
26 on mortgages as prescribed by article eleven of the tax law. Such bond
27 shall be deemed to extend to the faithful execution of the duties of the
28 office until a new appointment shall be made and confirmed, and the
29 person so appointed enters upon the performance of the commissioner's
30 duties. In case of any official misconduct or default on the part of
31 such commissioner of finance, or his or her subordinates, an action upon
32 such bond may be begun and prosecuted to judgment by the city, which,
33 after first paying therefrom the expenses of the litigation, shall cause
34 the proceeds of such judgment to be distributed as shall be lawful and
35 equitable among the persons and objects injured or defrauded by such
36 official misconduct or default of the commissioner of finance or any of
37 his or her subordinates.

38 § 11-104 Commissioner of finance to keep accounts. a. The commission-
39 er of finance shall keep books showing the receipts of moneys from all
40 sources, and designating the sources of same, and also showing the
41 amounts paid from time to time on account of the several appropriations,
42 the forms of which shall be prescribed by the comptroller.

43 b. The city collector or the deputy collector in receiving moneys
44 payable to the city, from whatever source derived, shall not issue a
45 receipt to the payor for a payment made by personal, business or corpo-
46 rate check unless specifically requested.

47 § 11-105 Agreements with financing agencies or card issuers; payment
48 of fines, civil penalties, taxes, fees, rates, rent, charges or other
49 amounts by credit card. 1. As used in this section, the following terms
50 shall have the following meanings:

51 a. "Card issuer" shall mean an issuer of a credit card, charge card or
52 other value transfer device.

53 b. "Credit card" means any credit card, credit plate, charge card,
54 charge plate, courtesy card, debit card or other identification card or
55 device issued by a person to another person which may be used to obtain
56 a cash advance or a loan or credit, or to purchase or lease property or

1 services on the credit of the person issuing the credit card or a person
2 who has agreed with the issuer to pay obligations arising from the use
3 of a credit card issued another person.

4 c. "Financing agency" means a person engaged, in whole or in part, in
5 the business of purchasing retail installment contracts, obligations or
6 credit agreements or indebtedness of buyers under credit agreements from
7 one or more retail sellers or entering into credit agreements with
8 retail buyers but shall not include a retail seller. The term includes
9 but is not limited to a bank, trust company, private banker, industrial
10 bank or investment company, if so engaged, but shall not include a
11 retail seller.

12 d. "Person" means an individual, partnership, corporation or any other
13 legal or commercial entity.

14 2. The city may enter into agreements with one or more financing agen-
15 cies or card issuers to provide for the acceptance by the city of credit
16 cards as an alternate means of payment of fines, civil penalties, taxes,
17 fees, rent, rates, charges or other amounts owed by a person to the
18 city. Any such agreement shall govern the terms and conditions upon
19 which a credit card proffered as a means of payment of a fine, civil
20 penalty, tax, fee, rent, rate, charge or other amount shall be accepted
21 or declined and the manner in and conditions upon which the financing
22 agency or card issuer shall pay to the city the amount of fines, civil
23 penalties, taxes, fees, rent, rates, charges or other amounts paid by
24 means of credit cards pursuant to such agreement. Any such agreement may
25 provide for the payment by the city to such financing agency or card
26 issuer of fees for the services rendered by such financing agency or
27 card issuer pursuant to such agreement, which fees may consist of a
28 discount deducted from or payable in respect of the amount of each such
29 fine, civil penalty, tax, fee, rent, rate, charge or other amount or
30 otherwise as the agreement may provide.

31 3. Notwithstanding any other provision of law to the contrary, any
32 agency or department of the city which, pursuant to an agreement entered
33 into under this section, accepts credit cards as a means of payment of
34 fines, civil penalties, taxes, fees, rent, rates, charges or other
35 amounts owed by a person to the city shall be authorized to charge and
36 collect from any person offering a credit card as a means of payment of
37 a fine a reasonable and uniform fee as a condition of accepting such
38 credit card in payment of a fine, civil penalty, tax, fee, rent, rate,
39 charge or other amount. Such fee shall not exceed the cost incurred by
40 the agency or department in connection with such credit card trans-
41 action, which cost shall include any fee payable by the city to the
42 financing agency.

43 § 11-106 Weekly reports by commissioner of finance to mayor and comp-
44 troller. The commissioner of finance shall report weekly in writing to
45 the mayor and to the comptroller all moneys received by the commission-
46 er, the amount of all warrants paid by him or her since the commission-
47 er's last report, and the amount remaining to the credit of the city.

48 § 11-107 Report to comptroller. The commissioner of finance, when
49 required by the comptroller, shall furnish to him or her such informa-
50 tion as the comptroller may demand in relation to the finances of the
51 city, within such reasonable time as the commissioner may direct.

52 § 11-108 Rules in signing warrants. No warrant shall be signed by
53 the comptroller or countersigned by the commissioner of finance, except
54 upon vouchers for the expenditures of the amount named therein, duly
55 prepared and audited according to the methods prescribed by the comp-

1 troller, and filed with the comptroller, except in the case of judg-
2 ments, in which case a transcript thereof shall be filed.

3 § 11-109 Commissioner of finance to exhibit bank book. The commis-
4 sioner of finance shall exhibit his or her bank book to the comptroller
5 on the first Tuesday of every month and more often when required.

6 § 11-110 When commissioner of finance to close accounts. The accounts
7 of the commissioner of finance shall be annually closed on the last day
8 of June.

9 § 11-111 Withdrawal of moneys by heads of agencies. Notwithstanding
10 any provision of the charter, any city treasury or sinking fund moneys
11 which have been duly withdrawn from any bank or trust company upon prop-
12 er warrant and check to the order of the head or heads of any agency or
13 agencies may be redeposited by such head or heads of such agency or
14 agencies in a properly designated deposit bank and thereafter such rede-
15 posited moneys may be withdrawn upon check signed by him or her or them
16 without additional warrant.

17 § 11-112 Authorization of subordinates to sign checks and warrants.
18 Notwithstanding any provision of the charter, the comptroller or commis-
19 sioner of finance may designate and authorize any deputies, assistant
20 deputies, or employees to sign, each in his or her own name and in place
21 of and for the comptroller or commissioner of finance, respectively, any
22 or all checks or warrants, including those issued against sinking fund
23 and trust fund bank accounts. A warrant or check so signed shall be of
24 the same force and effect as if signed by the comptroller or commis-
25 sioner of finance, respectively. The designation or designations of depu-
26 ties shall be made in writing in the manner set forth in section nine-
27 ty-four of the charter of the preceding municipality as it existed
28 January first, nineteen hundred ninety-four. The designation or desig-
29 nations of assistant deputies or employees shall be in writing, signed
30 in duplicate by the comptroller or the commissioner of finance, respec-
31 tively, and shall be duly filed and remain of record in the office of
32 the comptroller and the department of finance. The period for which
33 each such designation of deputies, assistant deputies and employees
34 shall continue in force shall be specified therein and may be terminated
35 by the comptroller or commissioner of finance, respectively, at any time
36 by filing in the same office or offices in which the designation has
37 been filed a written notice of such termination signed by the comp-
38 troller or commissioner of finance, respectively.

39 § 11-113 Acceptance of facsimile signatures by banks or trust compa-
40 nies. Notwithstanding any provision of the charter, checks drawn upon
41 any bank or trust company for payment of payrolls or disbursements for
42 relief, required to be signed by the head of an agency or his or her
43 authorized designee, may be signed by the facsimile signature or signa-
44 tures of the person or persons authorized to sign such checks, if the
45 head of such agency so authorizes by an instrument in writing signed by
46 the head of such agency and filed with the comptroller; and, in such
47 event, any bank or trust company shall, acting in good faith and without
48 notice of any defect or invalidity, be authorized to pay and be
49 protected in paying any checks bearing or purporting to bear the facsim-
50 ile signature or signatures of the person or persons duly authorized to
51 sign such checks, regardless of the person by whom or the means by which
52 the actual or purported facsimile signature or signatures thereon may
53 have been affixed thereto, if such facsimile signature or signatures
54 closely resemble the facsimile specimens from time to time filed with
55 such banks or trust companies by the head of the agency in question;
56 provided, however, that nothing herein contained shall release such bank

1 or trust company from any liability arising from any cause or fact other
2 than the fact that such facsimile signature is not a genuine facsimile
3 signature affixed with appropriate authority.

4 § 11-115 City collector; appointment; bond. The mayor shall appoint
5 the city collector. The city collector, before entering upon the duties
6 of his or her office, shall enter into a bond to the city of Staten
7 Island to be approved by the commissioner of finance and comptroller in
8 the penal sum of twenty-five thousand dollars, which bond shall be
9 conditioned for the faithful performance of the duties of the office by
10 the officer giving such bond. Such bond shall be a lien on all the real
11 estate held by the collector executing the same, or any surety thereto,
12 in the city at the time of the filing thereof, unless there be named and
13 described in or on any such bond, real estate in such city equal in
14 value to the amount of such bond and owned by a surety, in which case
15 the bond shall be a lien on such real estate so described and upon all
16 the real estate of such city collector, and no other, and shall continue
17 to be such lien until the condition, together with all costs and charges
18 which may accrue by the prosecution thereof, shall be fully satisfied,
19 or until such lien be released, not to exceed, however, the period of
20 ten years after the time when the officer who has given such bond shall
21 have ceased to hold his or her office, unless an action thereon has been
22 commenced and shall then be pending.

23 § 11-116 Deputies to give bond; duties. The city collector shall
24 take from each deputy a bond, in such penal sum and with such sureties
25 as may be approved by the city collector and by the comptroller and
26 commissioner of finance, which bond shall run to the city collector, the
27 city and to whom it may concern, and shall be conditioned for the faith-
28 ful performance of the duties of such deputy. Each bond taken in
29 pursuance of the provisions of this section shall be filed with the
30 comptroller. Each deputy collector shall have all the powers and be
31 subject to all the duties of the city collector in respect to the
32 collection and receipt of taxes, assessments, water rents and arrears.

33 § 11-117 Renewal of bond. If at any time during the continuance in
34 office of the city collector or deputy collectors the comptroller or
35 commissioner of finance shall deem any surety of them to be insuffi-
36 cient, he or she may require the city collector or deputy collectors to
37 enter into a new bond to be approved in like manner as prescribed in
38 section 11-115 of this chapter, within such time as the comptroller may
39 direct, not being less than ten days after requiring such new bond to be
40 given. In case of the neglect or refusal of any such officer to furnish
41 such bond within the time so directed, the comptroller or commissioner
42 of finance may declare his or her office vacant.

43 § 11-118 Bureau of city collections; duties. The duties of the bureau
44 of city collections shall also include the collection of water rents,
45 charges, fines and penalties in connection with the water supply,
46 including arrears, sewer rents, sewer surcharges, charges, fines and
47 penalties in connection with the sewer system as defined in sections
48 24-514 and 24-523 of the code of the preceding municipality, including
49 arrears, interest on bonds and mortgages and revenue arising from the
50 sale of property belonging to or managed by the city.

51 § 11-119 City collector; absence; suspension of. a. In case of
52 inability of the city collector to perform the duties of his or her
53 office by reason of sickness or absence from the city, the mayor shall
54 designate some suitable person to perform the duties of the city collec-
55 tor's office during such inability or absence, and shall, if the comp-

1 troller so requires, take from such person a bond, with sufficient sure-
2 ties, in the manner hereinafter prescribed.

3 b. If the city collector or any deputy collector shall on any day omit
4 or neglect to furnish to the commissioner of finance or to the comp-
5 troller, respectively, the statements and vouchers required in section
6 11-121 of this chapter, or to make the prescribed daily payments, it
7 shall be the duty of the commissioner of finance forthwith to suspend
8 him or her from office. In case of such suspension, the commissioner of
9 finance shall appoint a suitable person to perform the duties of the
10 officer so suspended, who shall continue to act as such officer until
11 the person suspended shall be restored or another person shall have been
12 appointed. On making such temporary appointment, the commissioner of
13 finance shall be required to take from the person so appointed a bond,
14 with two sufficient sureties, to be approved by the comptroller and
15 filed with the comptroller, in such penal sum as the comptroller may
16 deem just, conditioned for the faithful performance of the duties of the
17 office during the continuance of the person appointed therein; and all
18 the provisions of law prescribing the duties of the city collector and
19 deputy collectors shall apply to the person or persons so appointed.

20 § 11-120 Bond of city collector to be filed. The bond given by the
21 city collector shall be filed and remain in the office of the comp-
22 troller, and true copies thereof, certified by the comptroller, shall be
23 filed in the office of the clerk, and shall be public records. In case
24 a certificate of the adjustment of the accounts of the city collector be
25 made, a true copy thereof, certified by the comptroller, shall be filed
26 in each of the offices in which a copy of the bond of the city collector
27 shall have been filed.

28 § 11-121 City collector; daily statements and accounts. a. The city
29 collector or the deputy collector shall enter upon accounts, to be main-
30 tained in each such office for each parcel of property, the payment of
31 taxes, assessments, sewer rents or water rents thereon, the amount
32 therefor, and the date when paid. The city collector shall daily enter
33 into suitable books to be kept for the purpose of such accounts, such
34 payments and the respective parcels on account of which the same were
35 paid.

36 b. At close of office hours each day, the city collector shall render
37 to the commissioner of finance a statement of the sums so received, and
38 at the same time pay over to such commissioner of finance, the amount
39 received on such day. The city collector shall thereupon receive from
40 such commissioner of finance a voucher for the payment of such sums
41 which he or she shall exhibit to the comptroller not later than the next
42 succeeding business day.

43 c. At the close of office hours each day, the city collector shall
44 also furnish a statement to the comptroller who shall file the same in
45 his or her office. Such statement shall indicate in detail such sums so
46 received and the respective parcels on account of which the same were
47 paid. The comptroller shall, on each day, immediately after receiving
48 such statement, compare it with a voucher furnished to him or her by the
49 commissioner of finance indicating the sums which have been paid on such
50 day to the commissioner of finance and if the aggregate amounts thereof
51 shall correspond, shall credit the city collector in his or her books
52 with such amount.

53 § 11-122 Exemption from taxes granted to REMICs. An entity that is
54 treated for federal income tax purposes as a real estate mortgage
55 investment conduit, hereinafter referred to as a REMIC, as such term is
56 defined in section 860D of the internal revenue code, shall be exempt

1 from all taxation under chapters five and six of this title. A REMIC
2 shall not be treated as a corporation, partnership or trust for purposes
3 of chapter six of this title. The assets of a REMIC shall not be
4 included in the calculation of any tax liability under chapter six. This
5 provision does not exempt the holders of regular or residual interests,
6 as defined in section 860G of the internal revenue code, in a REMIC from
7 tax on or measured by such regular or residual interests, or on income
8 from such interests.

9 § 11-123 Interest compounded daily.

10 In computing the amount of any interest required to be paid under
11 section 11-224 (except subdivision j thereof), 11-224.1, 11-264, 11-306,
12 11-307, 11-312, 11-313, 17-151, 19-152, 24-317, 24-512, 24-605, 26-128,
13 26-517.1, 27-2144 or 27-4029.1 of the code, such interest shall be
14 compounded daily.

15 § 11-124 Conciliation conferences. a. The commissioner of finance may
16 establish a procedure for providing conciliation conferences for
17 purposes of settling contested determinations of taxes or charges or
18 denials of refunds or credits with respect to taxes or charges imposed
19 under chapter five, six, seven, eight, nine, eleven, twelve, thirteen,
20 fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or
21 twenty-seven of this title, or for the purpose of settling disputes
22 arising from the notification of the refusal to grant, the suspension or
23 the revocation of a license issued pursuant to chapter thirteen of this
24 title. If such a procedure is established, a conciliation conference
25 shall be provided at the option of any taxpayer or any other person
26 subject to the provisions of any of such chapters. For purposes of this
27 subdivision, if the commissioner of finance fails to act with respect to
28 a refund application before the expiration of the time period after
29 which the taxpayer may file a petition for refund with the tax appeals
30 tribunal established by section one hundred sixty-eight of the charter
31 of the preceding municipality as it existed January first, nineteen
32 hundred ninety-four pursuant to subdivision (c) of section 11-529 or
33 subdivision three of section 11-680 of the code, such failure shall be
34 deemed to be the denial of a refund.

35 b. A request for a conciliation conference shall be made in the manner
36 set forth in rules promulgated by the commissioner of finance and,
37 notwithstanding any provision of law to the contrary, shall suspend the
38 running of the period of limitations for the filing of a petition with
39 such tax appeals tribunal under chapter five, six, seven, eight, nine,
40 eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two,
41 twenty-four, twenty-five or twenty-seven of this title until such time
42 as a conciliation decision is rendered by the commissioner of finance,
43 or until the person who requested the conciliation conference makes a
44 written request to discontinue or withdraw from the conciliation
45 proceeding.

46 c. Nothing contained herein shall prevent any taxpayer or any other
47 person who has received a notice of determination, notice of deficiency
48 or notice of denial of a claim for refund from filing a petition with
49 such tax appeals tribunal if the time for filing such a petition has not
50 elapsed.

51 d. The commissioner of finance is authorized and empowered to make,
52 adopt and amend rules appropriate to the carrying out of this section
53 and the purposes thereof.

54 § 11-126 Definitions. When used in this title, the term "partnership"
55 shall mean an entity classified as a partnership for federal income tax
56 purposes, including a subchapter K limited liability company, and the

1 term "partner" or the term "member" when used in relation to a partner-
2 ship shall include a member of a subchapter K limited liability company,
3 unless the context requires otherwise. The term "subchapter K limited
4 liability company" shall mean a limited liability company classified as
5 a partnership for federal income tax purposes. The term "limited liabil-
6 ity company" means a domestic limited liability company or a foreign
7 limited liability company, as defined in section one hundred two of the
8 state limited liability company law, a limited liability investment
9 company formed pursuant to section five hundred seven of the banking
10 law, or a limited liability trust company formed pursuant to section one
11 hundred two-a of the banking law. Notwithstanding anything herein to
12 the contrary, this section shall not apply for purposes of chapter
13 seventeen or nineteen of this title.

14 § 11-128 Payment of real property taxes by electronic funds transfer.

15 a. Definition. "Electronic funds transfer" shall mean any transfer of
16 funds, other than a transaction originated by check, draft or similar
17 paper instrument, which is initiated through an electronic terminal,
18 telephonic instrument or computer or magnetic tape so as to order,
19 instruct or authorize a financial institution to debit or credit an
20 account.

21 b. Authority. Notwithstanding any provision of law to the contrary,
22 the department of finance may accept and, as authorized by this section,
23 require payment of real property taxes by electronic funds transfer, and
24 may authorize a designee to accept such payments. The department of
25 finance, or its designee, may take all actions necessary to complete and
26 administer such transactions, including but not limited to requesting
27 and collecting necessary information and the debiting of specified
28 accounts as provided for by this section.

29 c. Participation. Notwithstanding any provision of law to the contra-
30 ry, the commissioner may require the payment of real property taxes by
31 electronic funds transfer for properties with annual real property tax
32 liability equal to or greater than three hundred thousand dollars. The
33 owner of any such real property, or the person or entity authorized by
34 such owner to pay real property taxes on such real property, shall be
35 required to enroll in an electronic payment program to make such
36 payments, including any arrears in real property taxes on such real
37 property, by electronic funds transfer, either by payment initiated by
38 the taxpayer as described in paragraph one of subdivision d of this
39 section or by authorizing the department of finance to debit the rele-
40 vant account as described in paragraph two of subdivision d of this
41 section.

42 1. Notwithstanding any other provision of this section, where a
43 taxpayer pays real property taxes for more than one property by a single
44 payment, and the total annual real property tax liability for such prop-
45 erties is equal to or greater than three hundred thousand dollars, the
46 total annual real property tax liability for such properties shall be
47 used to determine whether the taxes for a property must be paid by elec-
48 tronic funds transfer.

49 2. (i) Where real property taxes are paid for more than one taxpayer
50 by a single bill or paid by a single entity, including but not limited
51 to a mortgage escrow agent as defined in subparagraph (ii) of this para-
52 graph, if the total amount paid is equal to or greater than three
53 hundred thousand dollars annually, such amount shall be used to deter-
54 mine whether the taxpayer or entity is required to participate in an
55 electronic funds transfer program.

1 (ii) For purposes of this paragraph, the term "mortgage escrow agent"
2 shall include every banking organization, federal savings bank, federal
3 savings and loan association, federal credit union, bank, trust company,
4 licensed mortgage banker, savings bank, savings and loan association,
5 credit union, insurance corporation organized under the laws of any
6 state other than New York, or any other person, entity or organization
7 which, in the regular course of its business, requires, maintains or
8 services escrow accounts in connection with mortgages on real property
9 located in the city.

10 d. Electronic payment program. The owner of real property, or other
11 person or entity authorized by such owner to pay real property taxes on
12 real property for which payment must be made by electronic funds trans-
13 fer under this section, may choose between participating in a taxpayer
14 initiated payment program or an automatic debit program, as set forth in
15 this subdivision and described in rules promulgated by the commissioner
16 of finance.

17 1. Taxpayer initiated program. In such a program, taxpayers initiate
18 payment by electric funds transfer, including payment by fedwire.

19 2. Automatic debit program. In such a program, taxpayers authorize the
20 department of finance, or the department's designee as determined by the
21 commissioner of finance, to debit the taxpayer's account for the amounts
22 due.

23 e. Notification of participation requirements. For taxpayers or enti-
24 ties subject to this section, the department of finance shall mail
25 notice of such requirement to the property owner or other party who has
26 been designated to receive real property tax bills on an owner's regis-
27 tration card filed by such owner. Such notice shall include the date by
28 which the owner or other party designated by such owner to pay real
29 property taxes on the property must enroll in the electronic payment
30 program.

31 f. Authorization. To administer the payment of real property taxes by
32 electronic funds transfer by automatic debit as described in paragraph
33 two of subdivision d of this section, the department of finance may
34 require that the party responsible for the payment of real property
35 taxes:

36 1. execute an electronic funds transfer agreement with the department
37 of finance or its designee, on a form approved by the department of
38 finance. Such form may be in a format designated by the commissioner,
39 including an electronic format. The agreement shall require that the
40 taxpayer authorize the department of finance or its designee to debit
41 such account on the last date by which the real property taxes may be
42 paid without the accrual of interest in accordance with applicable law;
43 and

44 2. furnish the department of finance or its designee with information
45 to enable the department of finance to complete the electronic funds
46 transfer transaction. Such information shall include, but not be limited
47 to, the name and address of the bank from which an electronic funds
48 transfer shall be authorized, the account number from which the payment
49 shall be authorized, the American Bankers Association (ABA) routing
50 number of the bank where the taxpayer maintains an account and the
51 borough, block and lot of the real property for which such payments are
52 authorized.

53 g. Timely payment. Notwithstanding any provision of law to the contra-
54 ry, where real property taxes are required to be made by electronic
55 funds transfer pursuant to subdivision c of this section, payment of

1 real property tax by electronic funds transfer shall be deemed timely
2 and not subject to interest charges if:

3 1. for taxpayers enrolled in a taxpayer initiated program pursuant to
4 paragraph one of subdivision d of this section, (i) the taxpayer proper-
5 ly initiates payment on the last date by which the real property taxes
6 may be paid without the accrual of interest in accordance with applica-
7 ble law; and (ii) on the last date by which the real property taxes may
8 be paid without the accrual of interest in accordance with applicable
9 law, such account contains sufficient funds to enable the successful
10 completion of the electronic funds transfer; or

11 2. for taxpayers enrolled in an automatic debit program pursuant to
12 paragraph two of subdivision d of this section, (i) the department of
13 finance or its designee has been authorized to debit the taxpayer's
14 account on the last date by which the real property taxes may be paid
15 without the accrual of interest in accordance with applicable law; (ii)
16 such account is properly identified; and (iii) on the date such payment
17 is due, such account contains sufficient funds to enable the successful
18 completion of the electronic funds transfer.

19 h. Charge on returned payments. Where the department of finance or its
20 designee attempts to debit a taxpayer's account pursuant to a valid
21 electronic funds transfer agreement and is unable to successfully
22 complete the electronic funds transfer due to insufficient funds or
23 other cause not attributable to the department of finance or its desig-
24 nee, in addition to any interest accruing from the late payment of taxes
25 in accordance with applicable law, the same fee that is imposed for a
26 dishonored check pursuant to section eighty-five of the general munici-
27 pal law shall be imposed on the affected real property, and such fee may
28 be collected in the manner provided in such section.

29 i. Hardship. If a taxpayer is unable to enroll in the electronic
30 payment program required by subdivision c of this section or subsequent
31 to enrollment becomes unable to make payments by electronic funds trans-
32 fer as required by this section, the taxpayer may seek a waiver by writ-
33 ten application to the department of finance that sets forth the reason
34 for such inability. Such waiver may be granted in the discretion of the
35 commissioner of finance, who may consider such criteria as:

36 1. the hardship, whether financial or practical, created by partic-
37 ipation in the electronic funds transfer program for the taxpayer seek-
38 ing the waiver;

39 2. the length of time for which the waiver is requested; and

40 3. any other factors that the commissioner may deem relevant.

41 The commissioner shall issue a determination, in writing, within ten
42 days of the department of finance's receipt of a waiver request pursuant
43 to this subdivision, but no waiver shall be granted with respect to the
44 payment of any installment of real property taxes that is due within
45 thirty days of the date of the request for a waiver.

46 j. Confidentiality. The department of finance shall assure the confi-
47 dentiality of information supplied by taxpayers in effecting electronic
48 funds transfers in accordance with applicable provisions of law. The
49 provisions of article six of the public officers law shall not apply to
50 any such information furnished by taxpayers subject to the requirements
51 of this section.

52 k. Failure to pay by electronic funds transfer. 1. With respect to any
53 real property as to which real property taxes are required to be paid by
54 electronic funds transfer under this section, but for which an install-
55 ment of real property taxes is not paid by electronic funds transfer and
56 is paid instead by any other method, including payment by check, (i)

1 with respect to the first installment that is paid by any other method,
2 including payment by check, the department of finance shall mail a warn-
3 ing notice to the taxpayer setting forth the requirement to make payment
4 by electronic funds transfer and the penalties for failure to do so; and
5 (ii) with respect to each and every subsequent installment that is paid
6 by any other method, including payment by check, the department of
7 finance shall impose a penalty charge in the amount of one percent of
8 the amount of the tax installment that was required under this section
9 to be paid by electronic funds transfer.

10 2. Any penalty charge imposed under this subdivision shall be a lien
11 against the real property for which the taxpayer failed to make a
12 payment in the manner required by this section, and shall accrue inter-
13 est at the same rate as is imposed on a delinquent tax on real property,
14 to be calculated to the date of payment from the date of entry. Such
15 lien shall be a tax lien within the meaning of sections 11-319 and
16 11-401 and may be sold, enforced or foreclosed in the manner provided in
17 chapters three and four of this title.

18 1. Rules. The commissioner may promulgate rules necessary to implement
19 this section.

20 CHAPTER 2

21 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

22 SUBCHAPTER 1

23 ASSESSMENT ON REAL PROPERTY

24 § 11-201 Assessments on real property; general powers of finance
25 department. The commissioner of finance shall be charged generally with
26 the duty and responsibility of assessing all real property subject to
27 taxation within the city.

28 § 11-202 Maps and records; surveyor. The commissioner of finance
29 shall appoint a surveyor who shall make the necessary surveys and
30 corrections of the block or ward maps, and also make all new tax maps
31 which may be required.

32 § 11-203 Maps and records; tax maps. a. As used in the charter of
33 the city of Staten Island and in this code, the term "tax maps" shall
34 mean and include the block map of taxes and assessments to the extent
35 that the territory within the city of Staten Island is or shall be
36 embraced in such map, such ward or land maps as embrace the remainder of
37 such city, and also such maps as may be prepared under and pursuant to
38 subdivision d of this section.

39 b. Each separately assessed parcel shall be indicated on the tax maps
40 by a parcel number or by an identification number. A separate identifi-
41 cation number shall be entered upon the tax maps in such manner as
42 clearly to indicate each separately assessed parcel of real property not
43 indicated by parcel numbering. Real property indicated by a single
44 identification number shall be deemed to be a separately assessed
45 parcel.

46 In the case of a newly created parcel with any building thereon, no
47 tax lot number or identification number shall be assigned to such parcel
48 unless the commissioner of the department of buildings has certified
49 that the newly created parcel complies with all applicable zoning laws.

50 c. Parcel numbers shall designate each parcel by the use of three or
51 more numbers, of which one shall be a section or ward number, another a
52 block, district or plat number, and another a lot number. The depart-
53 ment of finance may from time to time change the form of the section and
54 blocks, and also the numbers thereof, on the tax maps filed in its
55 office whenever such change of form has been caused pursuant to section

1 one hundred ninety-nine of the charter of the preceding municipality as
2 it existed on the first of January in the year next succeeding the
3 effective date of this section and there shall thereafter be delineated
4 and entered upon such maps such new additional sections and blocks and
5 their numbers as necessity may require. Such administration may from
6 time to time change the form of the lots or parcels comprised within any
7 block, and also the numbers thereof, and cause to be shown on such maps
8 the separate lots or parcels of land contained in any new block added
9 thereto and also the lot numbers thereof, according to the general plan
10 employed in the making of such maps.

11 d. Each separately assessed parcel indicated by an identification
12 number shall be shown by a description, or by inscription of such number
13 on the block map of taxes and assessments, or by other map and
14 description. Such numbers may be altered in the same manner as provided
15 in subdivision c of this section for the alteration of parcel numbers.

16 e. New tax maps shall be certified by the department of finance and
17 filed in its main office. All changes and alterations made in the tax
18 maps shall be transmitted within thirty days after such change or alter-
19 ation to such office.

20 § 11-204 Tax maps; block references; alterations and corrections. The
21 word "block", as used in this section designates a plot or parcel of
22 land such as is commonly so designated in the city, wholly embraced
23 within the continuous lines of streets, or streets and waterfront taken
24 together where water forms one of the boundaries of a block, and such
25 other parcels of land or land under water as may be indicated by the
26 department of finance upon such tax maps by block numbers as constitut-
27 ing blocks.

28 § 11-205 Maps and records; public inspection; evidential value. a. The
29 books, maps, assessment-rolls, files and records of the department of
30 finance shall be kept in such of the offices of the department of
31 finance as may be most convenient to the taxpayers of the city and suit-
32 able to the proper discharge of the business of the department of
33 finance. They shall be public records and shall at all reasonable times
34 be open to public inspection.

35 b. Copies of all such records and transcripts thereof, certified by
36 the commissioner of finance or an assessor or by an officer or employee
37 of the department of finance designated by the commissioner of finance,
38 and under the seal of the department of finance, shall be admissible in
39 evidence in all courts and places in the same manner and for the same
40 purposes as books, papers or documents similarly authenticated by the
41 clerk of a county.

42 § 11-206 Power of the commissioner of finance to correct errors. The
43 commissioner of finance may correct any assessment or tax which is erro-
44 neous due to a clerical error or to an error of description contained in
45 the several books of annual record of assessed valuations, or in the
46 assessments-rolls. If the taxes computed on such erroneous assessment
47 have been paid, the commissioner of finance is authorized to refund or
48 credit the difference between the taxes computed on the erroneous and
49 corrected assessments.

50 § 11-207 Duties of assessors in assessing property. a. In performing
51 their assessment duties, the assessors shall personally examine each
52 parcel of taxable real estate during at least every third assessment
53 cycle, and shall personally examine each parcel of real estate that is
54 not taxable during at least every fifth assessment cycle, as measured
55 from the last preceding assessment cycle during which such parcel was
56 personally examined, provided, however, the assessors shall revalue,

1 reassess or update the assessment of each parcel of taxable or nontaxa-
2 ble real estate during each assessment cycle, irrespective of whether
3 such parcel was personally examined during each assessment cycle.

4 b. The persons having charge of the assessment office shall furnish to
5 the commissioner of finance, under oath, a detailed statement of all
6 taxable real estate in the city. Such statement shall contain the
7 street, the section or ward, the block and lot and map or identification
8 numbers of such real estate embraced within such city; the sum for
9 which, in their judgment, each separately assessed parcel of real estate
10 would sell under ordinary circumstances if it were wholly unimproved
11 and, separately stated, the sum for which the same parcel would sell
12 under ordinary circumstances with the improvements, if any, thereon,
13 such sums to be determined with regard to the limitations contained in
14 the state real property tax law. Such statement shall include such
15 other information as the commissioner of finance may, from time to time,
16 require.

17 § 11-208 Special right of entry; certificate of the commissioner of
18 finance. A right of entry upon real property and into buildings and
19 structures at all reasonable times to ascertain the character of the
20 property shall not be allowed to any person acting in behalf of the
21 department of finance, other than the officials mentioned in sections
22 one hundred fifty-six and one thousand five hundred twenty-one of the
23 charter of the preceding municipality as it existed on the first of
24 January in the year next succeeding the effective date of this section,
25 unless a certificate therefor, executed in writing and signed by the
26 commissioner of finance, is presented by such person to the owner,
27 lessee, or occupant of the premises or his or her agent before entry
28 thereon is made.

29 § 11-208.1 Income and expense statements. a. Where real property is
30 income-producing property, the owner shall be required to submit annual-
31 ly to the department not later than the first of September a statement
32 of all income derived from and all expenses attributable to the opera-
33 tion of such property as follows:

34 (1) Where the owner's books and records reflecting the operation of
35 the property are maintained on a calendar year basis, the statement
36 shall be for the calendar year preceding the date the statement shall be
37 filed.

38 (2) Where the owner's books and records reflecting the operation of
39 the property are maintained on a fiscal year basis for federal income
40 tax purposes, the statement shall be for the last fiscal year concluded
41 as of the first of August preceding the date the statement shall be
42 filed.

43 (3) Notwithstanding the provisions of paragraphs one and two of this
44 subdivision, where the owner of the property has not operated the prop-
45 erty and is without knowledge of the income and expenses of the opera-
46 tion of the property for a consecutive twelve month period concluded as
47 of the first of August preceding the date of the statement shall be
48 filed, then the statement shall be for the period of ownership.

49 (4) The commissioner may for good cause shown extend the time for
50 filing an income and expense statement by a period not to exceed thirty
51 days.

52 b. Such statements shall contain the following declaration: "I certify
53 that all information contained in this statement is true and correct to
54 the best of my knowledge and belief. I understand that the willful
55 making of any false statement of material fact herein will subject me to

1 the provisions of law relevant to the making and filing of false instru-
2 ments and will render this statement null and void."

3 c. The form on which such statement shall be submitted shall be
4 prepared by the commissioner and copies of such form shall be made
5 available at the offices of the department in the county in which the
6 property is located. The commissioner may, by rule, require such state-
7 ment to be submitted electronically in such form and such manner as the
8 commissioner may determine. For good cause, the commissioner may waive
9 any rule requiring electronic filing and may permit a statement to be
10 filed in such other manner as the commissioner may designate.

11 d. (1) In the event that an owner of income-producing property fails
12 to file an income and expense statement within the time prescribed in
13 subdivision a of this section (determined with regard to any extension
14 of time for filing), such owner shall be subject to a penalty in an
15 amount not to exceed three percent of the assessed value of such
16 income-producing property determined for the current fiscal year in
17 accordance with section fifteen hundred six of the charter of the
18 preceding municipality as it existed on the first of January in the year
19 next succeeding the effective date of this section provided, however,
20 that if such statement is not filed by the thirty-first of December, the
21 penalty shall be in an amount not to exceed four percent of such
22 assessed value. If, in the year immediately following the year in which
23 an owner fails to file by the thirty-first of December, the owner again
24 fails to file an income and expense statement within the time prescribed
25 in subdivision a of this section (determined with regard to any exten-
26 sion of time for filing), such owner shall be subject to a penalty in an
27 amount not to exceed five percent of the assessed value of such property
28 determined for the current fiscal year. Such owner shall also be subject
29 to a penalty of up to five percent of such assessed value in any year
30 immediately succeeding a year in which a penalty of up to five percent
31 could have been imposed, if in such succeeding year the owner fails to
32 file an income and expense statement within the time prescribed in
33 subdivision a of this section (determined with regard to any extension
34 of time for filing). The penalties prescribed in this paragraph shall be
35 determined by the commissioner after notice and an opportunity to be
36 heard.

37 (2) The tax commission shall deny a hearing on any objection to the
38 assessment of property for which an income and expense statement is
39 required and has not been timely filed.

40 (3) Where an income and expense statement required under the
41 provisions of this section has not been timely filed, the commissioner
42 may compel by subpoena the production of the books and records of the
43 owner relevant to the income and expenses of the property, and may also
44 make application to any court of competent jurisdiction for an order
45 compelling the owner to furnish the required income and expense state-
46 ment.

47 e. As used in this section, the term "income-producing property" means
48 property owned for the purpose of securing an income from the property
49 itself, but shall not include property with an assessed value of forty
50 thousand dollars or less, or residential property containing ten or
51 fewer dwelling units or property classified in class one or two as
52 defined in article eighteen of the real property tax law containing six
53 or fewer dwelling units and one retail store.

54 f. Except in accordance with proper judicial order or as otherwise
55 provided by law, it shall be unlawful for the commissioner, any officer
56 or employee of the department, the president or a commissioner or

1 employee of the tax commission, any person engaged or retained by the
2 department or the tax commission on an independent contract basis, or
3 any person, who, pursuant to this section, is permitted to inspect any
4 income and expense statement or to whom a copy, an abstract or a portion
5 of any such statement is furnished, to divulge or make known in any
6 manner except as provided in this subdivision, the amount of income
7 and/or expense or any particulars set forth or disclosed in any such
8 statement required under this section. The commissioner, the president
9 of the tax commission, or any commissioner or officer or employee of the
10 department or the tax commission charged with the custody of such state-
11 ments shall not be required to produce any income and expense statement
12 or evidence of anything contained in them in any action or proceeding in
13 any court, except on behalf of the department or the tax commission.
14 Nothing herein shall be construed to prohibit the delivery to an owner
15 or his or her duly authorized representative of a certified copy of any
16 statement filed by such owner pursuant to this section or to prohibit
17 the publication of statistics so classified as to prevent the identifi-
18 cation of particular statements and the items thereof, or making known
19 aggregate income and expense information disclosed with respect to prop-
20 erty classified as class four as defined in article eighteen of the real
21 property tax law without identifying information about individual leas-
22 es, or making known a range as determined by the commissioner within
23 which the income and expenses of a property classified as class two
24 falls, or the inspection by the legal representatives of the department
25 or of the tax commission of the statement of any owner who shall bring
26 an action to correct the assessment. Any violation of the provisions of
27 this subdivision shall be punished by a fine not exceeding one thousand
28 dollars or by imprisonment not exceeding one year, or both, at the
29 discretion of the court, and if the offender be an officer or employee
30 of the department or the tax commission, the offender shall be dismissed
31 from office.

32 g. The commissioner shall be authorized to promulgate rules and regu-
33 lations necessary to effectuate the purposes of this section.

34 h. Subdivision f of this section shall be deemed a state statute for
35 purposes of paragraph (a) of subdivision two of section eighty-seven of
36 the public officers law.

37 § 11-209 Taxable status of building in course of construction. a. A
38 building in the course of construction, commenced since the preceding
39 fifth day of January and not ready for occupancy on the fifth day of
40 January following, shall not be assessed unless it shall be ready for
41 occupancy or a part thereof shall be occupied prior to the fifteenth of
42 April.

43 b. (1) A commercial building in the course of construction, commenced
44 since the fifth day of January one year preceding the taxable status
45 date and not ready for occupancy or partially occupied on the taxable
46 status date, shall not be assessed unless it shall be ready for occupan-
47 cy or a part thereof shall be occupied prior to the fifteenth day of
48 April following the taxable status date.

49 (2) A commercial building in the course of construction, commenced
50 since the fifth day of January two years preceding the taxable status
51 date and not ready for occupancy or partially occupied on the taxable
52 status date, shall not be assessed unless it shall be ready for occupan-
53 cy or a part thereof shall be occupied prior to the fifteenth day of
54 April following the taxable status date.

55 (3) A commercial building in the course of construction, commenced
56 since the fifth day of January three years preceding the taxable status

1 date and not ready for occupancy or partially occupied on the taxable
2 status date, shall not be assessed unless it shall be ready for occupan-
3 cy or a part thereof shall be occupied prior to the fifteenth day of
4 April following the taxable status date.

5 c. For purposes of this section, a "commercial building" shall mean a
6 building that is intended to be used, and upon completion is used,
7 exclusively for buying, selling or otherwise providing goods or
8 services, or for other lawful business, commercial or manufacturing
9 activities, excluding hotel services, except that a commercial building
10 may contain a residential component other than a hotel, provided (i)
11 that such residential component is receiving or has applied for and is
12 eligible to receive a partial exemption from real property taxes pursu-
13 ant to section four hundred twenty-one-a of the real property tax law,
14 or (ii) that such residential component in its entirety, both land and
15 building, is receiving or has applied for and is eligible to receive a
16 full exemption from real property taxes, provided, however, a "commer-
17 cial building" shall not include any building that is constructed on
18 block 1049, lot 29 as shown on the tax map of the city of New York for
19 the borough of Manhattan as such map was in effect for the assessment
20 roll published in calendar year two thousand.

21 d. Subdivision b of this section shall not apply to a tax lot that
22 constitutes a part of a building unless the building viewed as a whole
23 is a commercial building as defined in subdivision c of this section.

24 e. Any building that receives the benefit conferred pursuant to subdi-
25 vision b of this section that is subsequently determined not to have
26 been a commercial building as defined in subdivision c of this section
27 for any year in which it received such benefit shall have its assessment
28 corrected for any such year. Taxes shall be imposed in the amount that
29 would have applied had the corrected taxable assessed value appeared on
30 the final assessment roll.

31 § 11-210 Books of annual record of assessed valuation of real estate
32 indicated by parcel numbers; form and contents. a. There shall be kept
33 in the office of the department of finance, books of the annual record
34 of the assessed valuation of real estate to be called "the annual record
35 of the assessed valuation of real estate indicated by parcel numbers in
36 the Staten Island", in which shall be entered in detail the assessed
37 valuation of each separately assessed parcel indicated by a parcel
38 number within the limits of Staten Island.

39 b. The assessed valuation of each such parcel shall be set down in
40 such books in two columns. In the first column shall be stated, oppo-
41 site each such parcel, the sum for which such parcel would sell under
42 ordinary circumstances if wholly unimproved; and in the second column,
43 the sum for which such parcel would sell under ordinary circumstances
44 with the improvements, if any thereon.

45 c. Such books shall be prepared in such manner that the assessed valu-
46 ations entered therein shall be under sections and block headings as may
47 be most convenient for use in connection with the tax maps described in
48 section 11-203 of this chapter.

49 § 11-211 Books of annual record of assessed valuation of real estate
50 indicated by identification numbers. a. The assessed valuation of all
51 taxable real property indicated by identification numbers shall be
52 entered in the office of the department of finance.

53 b. The assessors in the city shall furnish to the commissioner of
54 finance at the office of the department of finance, a detailed statement
55 under oath of the assessable real property indicated by an identifica-
56 tion number in such city.

1 c. There shall be kept in the office of the department of finance,
2 books of the annual record of the assessed valuation of real estate to
3 be known as "the annual record of the assessed valuation of real estate
4 indicated by identification numbers", in which shall be entered the
5 assessed valuations of the real property mentioned in this section.

6 § 11-212 Power of the commissioner of finance to equalize assessments
7 before opening books. a. Before opening the several books of annual
8 record of assessed valuation for public inspection, the commissioner of
9 finance shall fix the valuations of property for the purpose of taxation
10 throughout the city at such sums as will, in the commissioner's judg-
11 ment, establish a just and equal relation between the valuations of
12 property throughout the entire city.

13 b. To this end the assessors are required to transmit to the commis-
14 sioner of finance in each year a report of the assessed valuation of
15 real property at such time prior to the fifteenth of January as such
16 commissioner may prescribe.

17 § 11-213 Errors in annual records or assessment-rolls. The omission
18 from the several books of annual record of assessed valuations or from
19 the assessment-rolls in respect to the entry therein of the name of the
20 rightful owner or owners of real estate, whether individuals or corpo-
21 rations, shall not invalidate any tax or assessment. In such case,
22 however, no tax shall be collected except from the real estate so
23 assessed.

24 § 11-214 Procedure on apportionment of assessment. a. The commissioner
25 of finance may apportion any assessment in such manner as he or she
26 shall deem just and equitable, and forthwith cause such assessment to be
27 cancelled and new assessments, equal in the aggregate to the cancelled
28 assessment, to be made on the proper books and rolls. Within five days
29 thereafter the commissioner of finance shall cause written notice of the
30 new assessments to be mailed to the owners of record of the real estate
31 so assessed at their last known residence or business address, and an
32 affidavit of the mailing of such notice to be filed in the office of the
33 department of finance.

34 b. When such notice is mailed after the first of February such owners
35 may apply for correction of such assessments within twenty days after
36 the mailing of such notice with the same force and effect as if such
37 application were made on or before the first of March in such year.

38 § 11-215 Entry of corrections made by tax commission. Upon receiving
39 notice of a correction of an assessment made by the tax commission, the
40 commissioner of finance shall cause the amount of the assessment as
41 corrected to be entered upon the proper books of annual record and the
42 assessment-rolls for the year for which such correction is made.

43 § 11-216 Reduction in assessments; publication. a. There shall be
44 published annually in the City Record a list of all reductions in real
45 property assessments granted by the tax commission identifying the name
46 of the property owner, the address and the amount of reduction.

47 b. No reduction shall be granted for an income-producing property
48 unless there is submitted to the tax commission a statement of income
49 and expenses in the form prescribed by the tax commission and which
50 shall be, in the case of property valued at one million dollars or more
51 certified by a certified public accountant. The commissioner granting
52 such reduction in assessment shall state in a short memorandum the basis
53 upon which the reduction is granted.

54 c. In all cases where the reduction in assessment for the current year
55 is for fifty thousand dollars or more, the concurrence of the president
56 of the tax commission shall be required.

1 § 11-217 Assessment-rolls; form and contents. Assessment-rolls shall
2 be so arranged with respect to number of columns and shall contain such
3 entries as the commissioner of finance shall prescribe, sufficient to
4 identify the property assessed and to show its total assessed valuation.
5 Real estate shall be described therein by the numbers by which such
6 property is designated on the tax maps and in the several books of the
7 annual record of the assessed valuation of real estate, and such numbers
8 shall import into the assessment-rolls any necessary identifying
9 description shown by the tax maps.

10 § 11-218 Assessment-rolls; delivery to council or city clerk. a. The
11 council shall meet at noon, on the day of delivery of the rolls, other
12 than a Saturday, Sunday, or legal holiday, at the city hall or usual
13 place of meeting for the purpose of receiving the assessment-rolls and
14 performing such other duties in relation thereto as are prescribed by
15 law.

16 b. If the council fails to meet as herein prescribed, the rolls shall
17 be delivered to the city clerk with the same effect as if delivered to
18 the council.

19 § 11-219 Books of annual record; delivery for publication. Within two
20 weeks after the delivery of the assessment-rolls to the council, the
21 commissioner of finance shall furnish to the director of the City Record
22 a copy of the several books of the annual record of the assessed valu-
23 ation of real estate, omitting, however, the two columns headed respec-
24 tively "size of house" and "houses on lot."

25 § 11-220 Council; date of meeting to fix tax rate. The council shall
26 meet on a day other than a Saturday, Sunday or legal holiday, to fix the
27 annual tax rate.

28 § 11-221 Extension of tax on assessment-rolls or upon assessment-roll
29 cards. The respective sums to be paid as taxes on the valuation of real
30 property, may be set down in the assessment-rolls, or upon assessment-
31 roll cards.

32 § 11-222 Tax account of the commissioner of finance. Upon notification
33 from the public advocate of the amount of taxes mentioned in such
34 assessment-rolls and tax warrants, the comptroller shall cause the prop-
35 er sum to be charged to the commissioner of finance for collection.

36 § 11-223 Apportionment of taxes. a. If a sum of money in gross has
37 been or shall be taxed upon any lands or premises, any person or persons
38 claiming any dividend or undivided part thereof may pay such part of
39 such sum so taxed and of any interest and charges due or charged there-
40 on, as the commissioner of finance may deem to be just and equitable.

41 b. The commissioner of finance shall apportion the assessed valuation
42 of such lands or premises.

43 c. The remainder of the sum of money so taxed and the interest and
44 charges shall be a lien upon the residue of the land and premises only,
45 and the tax lien upon such residue may be sold to satisfy such tax,
46 interest or charges thereon, in the same manner as though the residue of
47 said tax had been imposed only upon such residue of such lands or prem-
48 ises.

49 § 11-224 Interest on unpaid taxes. a. If any tax on real estate which
50 shall have become due and payable prior to January first, nineteen
51 hundred thirty-four, is unpaid in whole or in part, the commissioner of
52 finance shall charge, receive and collect interest upon the amount of
53 such tax or such part thereof, to be calculated to the date of payment
54 at the rate of seven per centum per annum from the date when such tax or
55 such part thereof became due and payable to January first, nineteen
56 hundred thirty-four, at the rate of ten per centum per annum from Janu-

1 ary first, nineteen hundred thirty-four to May first, nineteen hundred
2 thirty-seven, or at the rate of seven per centum per annum for such
3 period if the comptroller and the commissioner of finance, in their
4 discretion, both determine that the payment of any tax arrears at such
5 reduced rate of interest may operate to save the property upon which
6 such taxes are in arrears from foreclosure or encourage its development
7 or is otherwise in the public interest, at the rate of seven per centum
8 per annum from May first, nineteen hundred thirty-seven to August first,
9 nineteen hundred sixty-nine, and from August first, nineteen hundred
10 sixty-nine to December thirty-first, nineteen hundred seventy-six, at
11 the rate of seven per centum per annum if the annual tax on a parcel is
12 two thousand dollars or less, and at the rate of one per centum per
13 month if the annual tax on a parcel is more than two thousand dollars
14 or, irrespective of the annual tax, if a parcel consists of vacant or
15 unimproved land, and from January first, nineteen hundred seventy-seven
16 at the rate of seven per centum per annum if the annual tax on a parcel
17 is two thousand dollars or less, and at the rate of fifteen per centum
18 per annum if the annual tax on a parcel is more than two thousand
19 dollars or, irrespective of the annual tax, if a parcel consists of
20 vacant or unimproved land.

21 b. If any tax on real estate which shall have become due and payable
22 after January first, nineteen hundred thirty-four and prior to April
23 first, nineteen hundred thirty-seven, is unpaid in whole or in part, the
24 commissioner of finance shall charge, receive and collect interest upon
25 the amount of such tax or such part thereof, to be calculated to the
26 date of payment at the rate of ten per centum per annum from the date on
27 which such tax or such part thereof became due and payable to May first,
28 nineteen hundred thirty-seven, or at the rate of seven per centum per
29 annum for such period if the comptroller and the commissioner of
30 finance, in their discretion, both determine that the payment of any tax
31 arrears at such reduced rate of interest may operate to save the proper-
32 ty upon which such taxes are in arrears from foreclosure or encourage
33 its development or is otherwise in the public interest, at the rate of
34 seven per centum per annum from May first, nineteen hundred thirty-seven
35 to August first, nineteen hundred sixty-nine, from August first, nine-
36 teen hundred sixty-nine to December thirty-first, nineteen hundred
37 seventy-six, at the rate of seven per centum per annum if the annual tax
38 on a parcel is two thousand dollars or less, and at the rate of one per
39 centum per month if the annual tax on a parcel is more than two thousand
40 dollars or, irrespective of the annual tax, if a parcel consists of
41 vacant or unimproved land, and from January first, nineteen hundred
42 seventy-seven, at the rate of seven per centum per annum if the annual
43 tax on a parcel is two thousand dollars or less, and at the rate of
44 fifteen per centum per annum if the annual tax on a parcel is more than
45 two thousand dollars or, irrespective of the annual tax, if a parcel
46 consists of vacant or unimproved land.

47 c. If any tax on real estate which shall have become due and payable
48 on or after April first, nineteen hundred thirty-seven and prior to
49 August first, nineteen hundred sixty-nine is unpaid in whole or in part,
50 the commissioner of finance shall charge, receive and collect interest
51 upon the amount of such tax or such part thereof, to be calculated to
52 the date of payment at the rate of seven per centum per annum from the
53 day on which such tax or such part thereof became due and payable to
54 August first, nineteen hundred sixty-nine, from August first, nineteen
55 hundred sixty-nine to December thirty-first, nineteen hundred seventy-
56 six, at the rate of seven per centum per annum if the annual tax on a

1 parcel is two thousand dollars or less, and at the rate of one per
2 centum per month if the annual tax on a parcel is more than two thousand
3 dollars or, irrespective of the annual tax, if a parcel consists of
4 vacant or unimproved land, and from January first, nineteen hundred
5 seventy-seven at the rate of seven per centum per annum if the annual
6 tax on a parcel is two thousand dollars or less, and at the rate of
7 fifteen per centum per annum if the annual tax on a parcel is more than
8 two thousand dollars or, irrespective of the annual tax, if a parcel
9 consists of vacant or unimproved land.

10 d. If any tax on real estate which shall have become due and payable
11 on or after August first, nineteen hundred sixty-nine and prior to
12 December thirty-first, nineteen hundred seventy-six, is unpaid in whole
13 or in part, the commissioner of finance shall charge, receive and
14 collect interest upon the amount of such tax or such part thereof, to be
15 calculated from the date on which such tax or such part thereof became
16 due and payable to December thirty-first, nineteen hundred seventy-six,
17 at the rate of seven per centum per annum if the annual tax on a parcel
18 is two thousand dollars or less, and at the rate of one per centum per
19 month if the annual tax on a parcel is more than two thousand dollars
20 or, irrespective of the annual tax, if a parcel consists of vacant or
21 unimproved land, and from January first, nineteen hundred seventy-seven
22 at the rate of seven per centum per annum if the annual tax on a parcel
23 is two thousand dollars or less, and at the rate of fifteen per centum
24 per annum if the annual tax on a parcel is more than two thousand
25 dollars or, irrespective of the annual tax, if a parcel consists of
26 vacant or unimproved land.

27 e. If any tax on real estate which shall become due and payable at any
28 time on or after January first, nineteen hundred seventy-seven, shall
29 remain unpaid in whole or in part on the fifteenth day following the
30 date on which the same shall become due and payable, the commissioner of
31 finance shall charge, receive and collect interest upon the amount of
32 such tax or such part thereof remaining unpaid on that date, to be
33 calculated from the day on which such tax or such part thereof became
34 due and payable to the date of payment at the rate of seven per centum
35 per annum if the annual tax on a parcel is two thousand dollars or less,
36 and at the rate of fifteen per centum per annum if the annual tax on a
37 parcel is more than two thousand dollars or, irrespective of the annual
38 tax, if a parcel consists of vacant or unimproved land.

39 f. If any tax on real estate which shall become due and payable at any
40 time on or after July first, nineteen hundred seventy-nine, shall remain
41 unpaid in whole or in part on the fifteenth day following the date on
42 which the same shall become due and payable, or if any tax on real
43 estate which became due and payable prior to July first, nineteen
44 hundred seventy-nine shall remain unpaid on that date, the commissioner
45 of finance shall charge, receive and collect interest upon the amount of
46 such tax or such part thereof remaining unpaid, to be calculated, in the
47 case of any tax which shall become due and payable on or after July
48 first, nineteen hundred seventy-nine, from the day on which such tax or
49 such part thereof became due and payable, and in the case of any tax
50 which became due and payable prior to July first, nineteen hundred
51 seventy-nine, from July first, nineteen hundred seventy-nine, to the
52 date of payment at the rate of seven per centum per annum if the annual
53 tax on a parcel is two thousand seven hundred fifty dollars or less, and
54 at the rate of fifteen per centum per annum if the annual tax on a
55 parcel is more than two thousand seven hundred fifty dollars or, irre-
56 spective of the annual tax, if a parcel consists of vacant or unimproved

1 land. Any interest accrued prior to July first, nineteen hundred seven-
2 ty-nine, pursuant to subdivisions a through e of this section shall be
3 unaffected by the provisions of this subdivision.

4 g. No later than the twenty-fifth day of May of each year, the banking
5 commission shall transmit a written recommendation to the council of a
6 proposed interest rate to be charged for nonpayment of taxes on real
7 estate in those cases where the annual tax on a parcel is more than two
8 thousand seven hundred fifty dollars or where, irrespective of the annu-
9 al tax, a parcel consists of vacant or unimproved land. In making such
10 recommendations the commission shall consider the prevailing interest
11 rates charged for commercial loans extended to prime borrowers by
12 commercial banks operating in the city and shall propose a rate of at
13 least six per centum per annum greater than such rates. The council may
14 by resolution adopt an interest rate to be applicable to the aforemen-
15 tioned parcels and may specify in such resolution the date on which such
16 interest rate is to take effect.

17 h. Notwithstanding anything to the contrary contained in the recommen-
18 dation transmitted by the banking commission to the council relative to
19 the proposed rate of interest to be charged during the fiscal year of
20 the city commencing July first, nineteen hundred seventy-nine in the
21 case of nonpayment of real estate taxes, or contained in the resolution
22 adopted by the council in accordance with such recommendation, the coun-
23 cil hereby sets the interest rate to be charged during the fiscal year
24 of the city commencing July first, nineteen hundred seventy-nine for
25 nonpayment of real estate taxes at eighteen per centum per annum where
26 the annual tax on a parcel is more than two thousand seven hundred fifty
27 dollars or where the parcel consists of vacant or unimproved land.

28 i. The interest mentioned in subdivisions a through h of this section
29 shall be paid over and accounted for from time to time by such commis-
30 sioner of finance as a part of the tax collected by him or her.

31 j. When an installment agreement has been entered into pursuant to any
32 of the provisions of chapter four of this title, during the period
33 beginning on the date this subdivision takes effect and ending April
34 thirtieth, nineteen hundred eighty-two, the commissioner of finance
35 shall, notwithstanding any higher rate of interest prescribed pursuant
36 to applicable law, and unless a lower rate of interest is applicable to
37 a parcel covered by such an agreement, charge, collect and receive
38 interest on the arrears due and payable under such agreement, to be
39 calculated at the rate of ten percent per annum from May first, nineteen
40 hundred eighty-two to the date of payment of each installment. Any
41 interest accrued or accruing prior to May first, nineteen hundred eight-
42 y-two shall not be affected by the provisions of this subdivision but
43 shall be charged, collected and received in the manner and at the rates
44 prescribed pursuant to applicable law. Such ten percent rate of inter-
45 est shall be applicable only if, as of May first, nineteen hundred
46 eighty-two, (i) there has been no default in such agreement, and (ii)
47 all current taxes, assessments or other legal charges are paid as they
48 become due or within the period of grace provided by law. Where an
49 installment agreement has been entered into prior to May fifth, nineteen
50 hundred eighty-two pursuant to the provisions of either paragraph three
51 of subdivision a of section 11-413 of chapter four of this title prior
52 to March fourteenth, nineteen hundred seventy-nine or of subdivision a
53 of section 11-405 or subdivision h of section 11-409 of chapter four of
54 this title and said agreement is current as to both installment payments
55 and current taxes, assessments and other legal charges, the commissioner
56 of finance, on application of the party who entered into such agreement,

1 may cancel said agreement and enter into a new agreement containing the
2 terms provided on May fifth, nineteen hundred eighty-two. If any such
3 prior agreement is not cancelled as herein provided, any installments
4 due and payable under such agreement on or after May first, nineteen
5 hundred eighty-two shall be subject to interest at the rate and under
6 the conditions set forth above. In the event of any subsequent default
7 or failure to make timely payment of any installment payment or current
8 tax, assessment or other legal charge, the ten percent rate of interest
9 specified in this subdivision shall thereupon cease to be applicable and
10 the commissioner of finance shall thereafter charge, collect and receive
11 interest in the manner and at the rates prescribed pursuant to applica-
12 ble law.

13 k. 1. Notwithstanding any other provision of this section to the
14 contrary, but subject to the exception contained in paragraph two of
15 this subdivision, in the case of an installment of tax on real property
16 described in paragraph b of subdivision four of section fifteen hundred
17 nineteen of the city charter of the preceding municipality as it existed
18 on the first of January in the year next succeeding the effective date
19 of this section, interest shall be charged, received and collected at
20 the rate established pursuant to this section if such installment shall
21 remain unpaid in whole or in part on the date on which it shall become
22 due and payable.

23 2. If the tax rate for any fiscal year of the city has not been set by
24 the fifteenth of June preceding the start of such fiscal year, interest
25 shall not be charged, received and collected with respect to the first
26 installment of tax which is due and payable on the first of July in such
27 fiscal year if such installment is paid on or before the extended
28 payment date. For this purpose, the term "extended payment date" means
29 the date which falls the same number of days after the first of July in
30 such fiscal year as the number of days the date such tax rate is set
31 falls after such fifteenth of June.

32 1. No later than the fifth day following the effective date of this
33 subdivision and no later than May twenty-fifth of each succeeding year,
34 the banking commission shall transmit a written recommendation to the
35 council of proposed interest rates to be charged for nonpayment of taxes
36 on real property in those cases in which the annual tax on a parcel,
37 other than a parcel which consists of vacant or unimproved land, is not
38 more than two thousand seven hundred fifty dollars. In making such
39 recommendations, the banking commission shall consider the prevailing
40 interest rates charged for commercial loans extended to prime borrowers
41 by commercial banks operating in the city. In the case of any such
42 parcel with respect to which the real property taxes are held in escrow
43 and paid to the commissioner of finance by a "mortgage escrow agent," as
44 that term is defined in section fifteen hundred nineteen of the city
45 charter of the preceding municipality as it existed on the first of
46 January in the year next succeeding the effective date of this section,
47 the proposed rate shall be at least six percent per annum greater than
48 such prevailing prime rate, and in the case of all other such parcels,
49 the proposed rate shall be at least equal to such prevailing prime rate.
50 The council may by resolution adopt interest rates to be applicable to
51 the aforementioned parcels and may specify in such resolution the dates
52 on which such interest rates are to take effect. In the event the coun-
53 cil does not adopt interest rates as provided in this subdivision, the
54 interest rates otherwise specified in this section shall be applicable.

55 § 11-224.1 Interest on unpaid real property tax.

1 (a) For real property with an assessed value of eighty thousand
2 dollars or less, if an installment of tax due and payable is not paid by
3 July fifteenth, October fifteenth, January fifteenth or April fifteenth,
4 interest shall be imposed on such unpaid amounts.

5 (b) For real property with an assessed value of over eighty thousand
6 dollars, if an installment of tax due and payable is not paid by July
7 first or January first, interest shall be imposed on such unpaid
8 amounts.

9 (c) If the council does not adopt interest rates by July first, two
10 thousand twenty-five, the rates shall be (i) for real property with an
11 assessed value of eighty thousand dollars or less, seven percent per
12 annum; and (ii) for real property with an assessed value of over eighty
13 thousand dollars, fifteen percent per annum.

14 (d) (i) Any tax or part of a tax that became due before July first,
15 two thousand five and remains unpaid after June thirtieth, two thousand
16 twenty-five, shall continue to accrue interest until paid at the rate
17 applicable under this section.

18 (ii) This section shall not apply to interest accrued before July
19 first, two thousand twenty-five.

20 (e) By May twenty-fifth of each year, the banking commission shall
21 send a written recommendation to the council of a proposed interest rate
22 to be charged for nonpayment of taxes on real property. The commission
23 shall consider the prevailing interest rates charged for commercial
24 loans extended to prime borrowers by commercial banks operating in the
25 city and:

26 (i) for real property with an assessed value of eighty thousand
27 dollars or less, shall propose a rate at least equal to such prevailing
28 prime rate;

29 (ii) for real property with an assessed value of over eighty thousand
30 dollars, shall propose a rate of at least six percent per annum greater
31 than such prevailing prime rate.

32 The council may by resolution adopt interest rates to be applicable to
33 the aforementioned properties and may specify in such resolution the
34 date that such rates will take effect.

35 (f) If the tax rate for any fiscal year of the city is not set by the
36 fifteenth of June preceding the start of such fiscal year, interest
37 shall not be charged for the first installment of tax which is due on
38 the first day of July in such fiscal year if such installment is paid on
39 or before the extended payment date. For this purpose, the term
40 "extended payment date" means the date which falls the same number of
41 days after the first day of July in such fiscal year as the number of
42 days the date such tax rate is set falls after such fifteenth day of
43 June.

44 (g) For purposes of this section, property held in the cooperative
45 form of ownership shall not be deemed to have an assessed value of over
46 eighty thousand dollars if the property's assessed value divided by the
47 number of residential dwelling units is eighty thousand dollars or less
48 per unit.

49 § 11-225 Power of tax commission to remit or reduce taxes. The tax
50 commission shall have power to remit or reduce a tax imposed upon real
51 property where lawful cause therefor is shown or where such tax is found
52 to be excessive or otherwise erroneous, but such remission or reduction
53 shall be made only with respect to an assessment for which an applica-
54 tion for correction has been made pursuant to section one hundred
55 sixty-three of the charter, and no such remission or reduction shall be
56 made when a claim to correct the assessment or recover the tax would be

1 barred by passage of time or other adequate defense, or when, at the
2 time that the determination is rendered, applications for correction or
3 other proceedings are pending to review the assessment of such property
4 for more than one subsequent fiscal year, provided, however, the tax
5 commission shall have no power to remit or reduce a tax pursuant to this
6 section more than five years after the last day on which an application
7 for correction could have been filed to appeal the unlawful or erroneous
8 assessment upon which such tax was based. If such tax shall have been
9 paid the commissioner of finance is authorized to refund or credit the
10 amount of any such remission or reduction granted pursuant to this
11 section. When the correction results from an application for correction
12 made by the board of managers of a condominium, a refund may be paid to
13 the board of managers for distribution to the individual unit owners
14 with the consent of such board and on such conditions as the commis-
15 sioner deems appropriate.

16 § 11-226 Special right of entry; certificate of president. A right of
17 entry upon real property and into buildings and structures at all
18 reasonable times to ascertain the character of the property shall not be
19 allowed to any person acting in behalf of the tax commission, other than
20 the officials mentioned in sections one hundred fifty-six and fifteen
21 hundred twenty-one of the charter of the preceding municipality as it
22 existed on the first of January in the year next succeeding the effec-
23 tive date of this section, unless a certificate therefor, executed in
24 writing and signed by the president of the tax commission, is presented
25 by such person to the owner, lessee or occupant of the premises or his
26 agent before entry thereon is made.

27 § 11-227 Duties of authorized employees in examining applicants. a.
28 Employees of the tax commission, when authorized to take testimony on
29 application, shall reduce such testimony to writing.

30 b. Within ten days after the evidence on any application is taken,
31 they shall transmit the application and testimony so taken, with their
32 recommendation, to the tax commission at its main office or such other
33 office as the commission may prescribe.

34 § 11-228 Testimony taken on application to constitute part of record.
35 All written testimony taken by the tax commission, by a commissioner, or
36 by an employee of the commission authorized to take testimony on appli-
37 cations, shall constitute part of the record of the proceedings upon any
38 assessment.

39 § 11-229 Solicitation of retainers prohibited. It shall be unlawful
40 for any person or his or her or its agents or employee, or any person
41 acting on his or her or its behalf, to solicit, or procure through
42 solicitation, either directly or indirectly, any retainer or agreement:

43 (a) Authorizing such person, or his or her or its agent, employee or
44 any person acting on his or her or its behalf, to make application to
45 the commissioner of finance or tax commission for the correction of a
46 tentative or final assessed valuation of real property on behalf of an
47 owner of such property or other person claiming to be aggrieved, or

48 (b) Authorizing such person, or his or her or its agent, employee or
49 any person acting on his or her or its behalf, to appear for such
50 purpose or represent such owner or aggrieved person before such commis-
51 sion or a commissioner or any other officer or employee authorized by
52 law to act upon such application, examine applicants, take testimony,
53 make or recommend the making of a correction of any such assessed valu-
54 ation, or take any other official action in relation to any such
55 correction. Any violation of this section shall be a misdemeanor.

1 § 11-230 Issuance of final determination; limitation of time. Except
2 as otherwise provided in section one hundred sixty-five of the charter
3 of the preceding municipality as it existed on the first of January in
4 the year next succeeding the effective date of this section, the final
5 determination of the tax commission upon any application for the
6 correction of an assessment and upon the evidence taken thereunder
7 shall, where the evidence is taken by the commission or by a commis-
8 sioner, be rendered within thirty days after the hearing of such applica-
9 tion is closed. Where the evidence is taken by an employee of the tax commis-
10 sion authorized to take testimony on applications, the final determi-
11 nation shall be rendered within thirty days after the application and
12 the testimony hereon shall have been filed with the commission at its
13 main office.

14 Immediately upon making a correction of an assessment, the tax commis-
15 sion shall notify the commissioner of finance thereof.

16 § 11-231 Proceeding to review tax assessment; contents of petition. a.
17 Any person or corporation claiming to be aggrieved by the assessed valu-
18 ation of real property may commence a proceeding to review or correct on
19 the merits a final determination of the tax commission by serving on the
20 president of the tax commission, or his or her duly authorized agent, a
21 copy of a verified petition as prescribed by law. No such petition shall
22 be accepted unless, prior to the service thereof, an index number has
23 been obtained from the county clerk. Within ten days after a proceeding
24 has been commenced as hereinbefore provided, the original verified peti-
25 tion with proof of service shall be filed in the office of the clerk of
26 the court in which the proceeding is to be heard.

27 b. Such review shall be allowed only on one or more of the following
28 grounds, which must be specified in such petition:

29 1. That the assessment is illegal, and stating the particulars of the
30 alleged illegality, or

31 2. That the assessment is erroneous by reason of over-valuation, or

32 3. That the assessment is erroneous by reason of inequality, in that
33 it has been made at a higher proportionate valuation than the assessment
34 of other real property on the assessment rolls of the city for the same
35 year, and for assessments made after December thirty-first, nineteen
36 hundred eighty-one, other real property within the same class as defined
37 in section eighteen hundred two of the real property tax law, specifying
38 the instances in which such inequality exists and the extent thereof,
39 and stating that the petitioner is or will be injured thereby, or

40 4. That the real property is misclassified, and stating the class in
41 which it is claimed the property should be classified.

42 c. The proceeding shall be maintained against the tax commission
43 either by naming the president and the commissioners of the tax commis-
44 sion individually, or by naming the tax commission of the city of Staten
45 Island generally.

46 d. Such proceeding to review and all proceedings thereunder shall be
47 brought at a special term of the supreme court in the judicial district
48 where the real property so assessed is situated.

49 e. The justice or referee before whom such proceeding shall be heard
50 may inspect the real property which is the subject of the proceeding.

51 § 11-232 Comptroller; rates of interest on taxes and assessments. The
52 comptroller shall not reduce the rate of interest upon any taxes or
53 assessments below the amount fixed by law.

54 § 11-233 Cancellation of unpaid taxes. When it shall appear to the
55 comptroller that the unpaid taxes or assessments, or both, together with
56 the interest and penalties thereon which may have been levied upon a

1 parcel of real estate subject to easements which were in existence prior
2 to the levying of such taxes or assessments, equal or exceed the sum for
3 which, under ordinary circumstances, such parcel of real estate would
4 sell subject to such easements, the comptroller, with the written
5 approval of the corporation counsel, may settle and adjust such unpaid
6 taxes or assessments, or both, with the interest and penalties thereon,
7 and when it shall appear to the comptroller that such parcel of real
8 estate would sell under ordinary circumstances subject to such easements
9 for only a nominal sum, then the comptroller with the written approval
10 of the corporation counsel may cancel such unpaid taxes and assessments
11 together with the interest and penalties thereon.

12 § 11-235 Board of estimate; power to cancel taxes, assessments and
13 water rents. The board of estimate, upon the written certificate of the
14 comptroller approving the same, with whom application for relief under
15 this section shall be filed, in its discretion and upon such terms as it
16 may deem proper, by unanimous vote, may cancel and annul all taxes,
17 assessments and water rents and sales to the city of any or all of the
18 same which now are or may hereafter become a lien against any real
19 estate owned by any corporation, entitled to exemption of such real
20 estate owned by it from local taxation under the provisions of the real
21 property tax law formerly contained in subdivision six of section four
22 of the tax law, provided that all taxes and water rents from which
23 relief is asked be apportioned as of the date such corporation took
24 title to such real estate, and that such taxes and water rents so appor-
25 tioned to the period before such date, and all assessments which became
26 a lien before such date, be paid. The commissioner of finance shall mark
27 the city's books and rolls of taxes, assessments and water rents in
28 accordance with the determination of the board of estimate in every case
29 in which action shall be taken under the provisions of this section.

30 § 11-236 Powers of board of estimate to cancel taxes, water rents and
31 assessments. The council by local law may authorize the board of esti-
32 mate, by a unanimous vote, upon the written consent of the comptroller,
33 to cancel and annul any taxes, water rents and assessments constituting
34 a lien against any real property owned by a corporation whose property
35 is exempt from taxation under the provisions of the real property tax
36 law, notwithstanding that such taxes, water rents or assessments shall
37 have become a lien against such real property while owned by a person or
38 corporation not exempt under such section. The commissioner of finance
39 shall mark the city's books and rolls of taxes and assessments in
40 accordance with the determination of the board of estimate under such
41 local law.

42 § 11-237 Cancellation of assessments, water and sewer rents on real
43 property acquired by tax enforcement foreclosure proceedings. Upon the
44 cancellation of unpaid assessments, water and sewer rents by the city
45 collector pursuant to section 11-353 of this title, the comptroller
46 shall charge the unpaid amounts for assessments for local improvements,
47 so cancelled, to the surplus in the appropriate assessment fund; the
48 unpaid amounts for water charges, meter setting and repair, meter glass-
49 es and sewer rents, so cancelled, shall be deducted from the accounts
50 receivable of the appropriate fund.

51 § 11-238 Real property tax surcharge on absentee landlords. a. Imposi-
52 tion of surcharge. A real property tax surcharge is hereby imposed on
53 class one property, as defined in section eighteen hundred two of the
54 real property tax law, excluding vacant land, that provides rental
55 income and is not the primary residence of the owner or owners of such
56 class one property, or the primary residence of the parent or child of

1 such owner or owners, in an amount equal to zero percent of the net real
2 property taxes for fiscal years beginning on or after the first of July
3 in the second year next succeeding the effective date of this section.
4 As used in this section, "net real property tax" means the real property
5 tax assessed on class one property after deduction for any exemption or
6 abatement received pursuant to the real property tax law or this title.

7 b. Rental income, primary residence and/or relationship to owner or
8 owners. The property shall be deemed to be the primary residence of the
9 owner or owners thereof, if such property would be eligible to receive
10 the real property tax exemption pursuant to section four hundred twenty-
11 ty-five of the real property tax law, regardless of whether such owner
12 or owners has filed an application for, or the property is currently
13 receiving, such exemption. Proof of primary residence and the resident's
14 or residents' relationship to the owner or owners and the absence of
15 rental income shall be in the form of a certification as required by the
16 rules of the commissioner.

17 c. Rules. The department of finance shall have, in addition to any
18 other functions, powers and duties which have been or may be conferred
19 on it by law, the power to make and promulgate rules to carry out the
20 purposes of this section, including, but not limited to, rules related
21 to the timing, form and manner of any certification required to be
22 submitted under this section.

23 d. Penalties. 1. Notwithstanding any provision of any general, special
24 or local law to the contrary, an owner or owners shall be personally
25 liable for any taxes owed pursuant to this section whenever such owner
26 or owners fail to comply with this section or the rules promulgated
27 hereunder, or makes a false or misleading statement or omission and the
28 commissioner determines that such act was due to the owner or owners'
29 willful neglect, or that under such circumstances such act constituted a
30 fraud on the department. The remedy provided herein for an action in
31 person shall be in addition to any other remedy or procedure for the
32 enforcement of collection of delinquent taxes provided by general,
33 special or local law.

34 2. If the commissioner should determine, within three years from the
35 filing of an application or certification pursuant to this section, that
36 there was a material misstatement on such application or certification,
37 he or she shall impose a penalty tax against the property of five
38 hundred dollars, in accordance with the rules promulgated hereunder.

39 e. Cessation of use. In the event that a property granted an exemption
40 from taxation pursuant to this section ceases to be used as the primary
41 residence of such owner or owners or his, her or their parent or child,
42 or produces rental income, such owner or owners shall so notify the
43 commissioner.

44 SUBCHAPTER 2

45 EXEMPTIONS FROM REAL PROPERTY TAXATION

46 PART 1

47 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

48 § 11-241 Discrimination in tax exempt projects. No exemption from
49 taxation, for any project, other than a project hitherto agreed upon or
50 contracted for, shall be granted to a housing company, insurance compa-
51 ny, redevelopment company or redevelopment corporation, which shall
52 directly or indirectly, refuse, withhold from, or deny to any person any
53 of the dwelling or business accommodations in such project or property,
54 or the privileges and services incident to occupancy thereof, on account
55 of the race, color or creed of any such person.

1 Any exemption from taxation hereafter granted shall terminate sixty
2 days after a finding by the supreme court of the state of New York that
3 such discrimination is being or has been practiced in such project or
4 property; if within sixty days such discrimination shall have been
5 ended, then the exemption shall not terminate.

6 § 11-242 Exemption and tax abatement in regard to improvements of
7 substandard dwellings. a. As used in this section, the following terms
8 shall have the following meanings: 1. "Alteration" and "improvement": a
9 physical change in an existing dwelling other than painting, ordinary
10 repairs, normal replacements or maintenance items.

11 2. "Existing dwelling": a class A multiple dwelling in existence prior
12 to the commencement of alterations for which tax exemption and abatement
13 is claimed under the terms of this section and for which a valuation
14 appears on the annual record of assessed valuation of the city for the
15 fiscal year nineteen hundred fifty-five--nineteen hundred fifty-six.

16 3. "Start" on alteration or improvement: begin any physical operation
17 undertaken for the purpose of making alterations or improvements to an
18 existing dwelling.

19 4. "Complete" an alteration or improvement: conclude or terminate any
20 physical operation such as is referred to in subparagraph three of this
21 paragraph, to an extent or degree which renders such building capable of
22 use for the purpose for which the improvements or alterations were
23 intended.

24 5. "Multiple dwelling": multiple dwellings as that term is defined in
25 section four of the multiple dwelling law.

26 b. Any increase in assessed valuation resulting from alterations and
27 improvements to existing dwellings to eliminate presently existing
28 unhealthy or dangerous conditions in any existing dwelling or to replace
29 inadequate and obsolete sanitary facilities in any such dwelling, any of
30 which represent fire or health hazards, or to provide central or other
31 appropriate and approved heating, except insofar as the gross cubic
32 content of the building is increased thereby, shall be exempt from taxa-
33 tion for local purposes for a period of twelve years after the taxable
34 status date immediately following the completion of the alterations and
35 improvements, to the extent that such increase in assessed valuation
36 result from the reasonable cost of such alterations and improvements,
37 providing that construction is started after March first, nineteen
38 hundred fifty-five and completed before December thirty-first, nineteen
39 hundred fifty-nine. The assessed valuation allocated to such dwelling
40 after such alterations and improvements during such period of twelve
41 years, exclusive of the increase in valuation which is exempted, shall
42 not exceed the valuation of the previously existing dwelling appearing
43 on the assessment rolls after the taxable status date immediately
44 preceding the commencement of such alterations and improvements. The
45 assessed valuation of the land occupied by such dwelling and any
46 increase in valuation resulting from alterations and improvements other
47 than those made pursuant to this section, shall not be affected by the
48 provisions of this section.

49 c. The taxes upon any such property, including the land, shall be
50 abated and reduced by an amount equal to eight and one-third per centum
51 of the reasonable cost of such alterations and improvements each year
52 for a period of nine years commencing with the first tax bill for the
53 first tax year in which the exemption herein provided is effective, but
54 such abatement of taxes in any consecutive twelve-month period shall in
55 no event exceed the amount of taxes payable in such period.

1 d. The department of buildings shall determine and certify the reason-
2 able cost of any such alterations and improvements and for that purpose
3 may adopt rules and regulations, administer oaths to and take testimony
4 of any person, including but not limited to the owner of such property,
5 may issue subpoenas requiring the attendance of such persons and the
6 production of such books, papers or other documents as the department
7 shall deem necessary, may make preliminary estimates of the maximum
8 reasonable cost of such alterations and improvements, may establish
9 maximum allowable costs for specified units, fixtures or work in such
10 alterations or improvements, and may require the submission of plans and
11 specifications of such alteration and improvements before the start
12 thereof. Application forms for the benefits of this section shall be
13 filed with the tax commission between February first and March fifteenth
14 and the tax commission shall certify to the city collector the amount of
15 taxes to be abated and reduced, pursuant to the certification of the
16 commissioner of buildings as herein provided. No such application shall
17 be accepted unless accompanied by copies of certificates of the city
18 planning commission and the commissioner of buildings, as provided in
19 this subdivision and in subdivision e of this section.

20 e. To the end that alterations and improvements in such property shall
21 interfere as little as practicable with urgently needed public improve-
22 ments, and the clearance and rebuilding of substandard and insanitary
23 areas, and shall be confined to multiple dwellings which are struc-
24 turally sound, comply with applicable provisions of law, and are
25 provided with adequate central or other appropriate and approved heating
26 exemption or abatement from taxation hereunder shall be restricted to
27 dwellings which: (1) the city planning commission certify will not undu-
28 ly interfere with projected public improvements or the clearance and
29 rebuilding of substandard and insanitary areas which certification shall
30 be evidenced by a certificate describing the property involved and shall
31 be issued upon application to such city planning commission in such
32 manner and in such form as may be prescribed by such city planning
33 commission, and (2) which the department of buildings shall certify to
34 be structurally sound, comply with applicable provisions of law and
35 provide central or other appropriate and approved heating, which certif-
36 ication shall be evidenced by a certificate describing the property
37 involved and shall be issued upon application to the department of
38 buildings in such manner and in such form as may be prescribed by such
39 department. Where the improvements and alterations include or benefit
40 that part of a building which is occupied by stores or used for commer-
41 cial purposes, the cost shall be apportioned so that the benefits of
42 this section shall not be provided for the cost of the improvements or
43 alterations made for store or commercial purposes.

44 f. Notwithstanding the provisions of the multiple dwelling law, or any
45 local law, ordinance, provisions of this code, rule or regulation, any
46 dwelling to which alterations and improvements are made pursuant to this
47 section and which did not require a certificate of occupancy on April
48 second, nineteen hundred forty-five, may be occupied lawfully after such
49 date upon the completion of such alterations and improvements without
50 such a certificate being obtained, provided, however, that such alter-
51 ations and improvements shall have been made in conformity with law and
52 the applicable provisions for fire protection required by articles six
53 and seven of the multiple dwelling law.

54 g. No owner of a dwelling to which the benefits of this section shall
55 be applied nor any agent, employee, manager or officer of such owner
56 shall directly or indirectly deny to any person because of race, color,

1 creed, or religion any of the dwelling accommodations in such property
2 or any of the privileges or services incident to occupancy therein.

3 h. Each agency to which functions are assigned by this section may
4 adopt rules and regulations for the effectuation of the purposes of this
5 section, and a copy, for each member of the council, of such rules and
6 regulations shall be filed with the clerk of the council prior to
7 promulgation.

8 i. Any person who shall knowingly and wilfully make any false state-
9 ment as to any material matter in any application for the benefits of
10 this section shall be guilty of an offense punishable by a fine of not
11 more than five hundred dollars or imprisonment for not more than ninety
12 days, or both.

13 j. The benefits of this section shall not apply to any multiple dwell-
14 ing which is not subject to the provisions of the emergency housing rent
15 control law or its successor statute for the city of Staten Island,
16 provided that this subdivision shall not operate to rescind any benefits
17 granted by the tax commission under this section prior to July first,
18 nineteen hundred fifty-eight; and further provided that where the bene-
19 fits herein provided were or are granted by the tax commission on or
20 after July first, nineteen hundred fifty-eight to any multiple dwelling
21 which is decontrolled subsequent to the granting of such benefits, the
22 tax commission shall withdraw such benefits, effective upon the
23 commencement of the first tax year following the tax year in which such
24 multiple dwelling is decontrolled.

25 § 11-243 Reextension of exemption and tax abatement in regard to
26 improvements of substandard dwellings. a. As used in this section, the
27 following terms shall have the following meanings:

28 1. "Alteration" and "improvement": a physical change in an existing
29 dwelling other than painting, ordinary repairs, normal replacement of
30 maintenance items, provided, however, that ordinary repairs and normal
31 replacement of maintenance items, as defined by rules adopted by the
32 department of housing preservation and development pursuant to subdivi-
33 sion m of this section, shall be eligible for tax exemption and tax
34 abatement under this section provided that repairs and maintenance
35 items:

36 (1) were started and completed within a twelve-month period,

37 (2) were made to any common area of the dwelling premises concurrently
38 with a major capital improvement thereto, as defined by rules adopted by
39 the department of housing preservation and development pursuant to
40 subdivision m of this section,

41 (3) require the issuance of a permit for at least one item thereof by
42 any city agency, and

43 (4) the amount of money expended thereon shall not exceed two times
44 the amount expended on the major capital improvement performed concu-
45 rently therewith.

46 "Alteration" and "improvement" shall also mean "an abatement" of lead-
47 based paint hazards, as defined in part 745 of title forty of the code
48 of federal regulations or any successor regulations in any existing
49 dwelling including any common areas, and shall include an "inspection"
50 and "risk assessment" for lead-based paint hazards, as defined in such
51 part, in a dwelling unit whether such unit is vacant or occupied but
52 shall not include any work performed to comply with a notice of
53 violation issued for a violation of article fourteen of subchapter two
54 of chapter two of title 27 of the administrative code of the city of New
55 York. For purposes of this paragraph, the term, "targeted area" shall
56 mean the geographical area of New York city that is determined by the

1 department of health and mental hygiene to have high rates of children
2 with environmental intervention blood lead levels. The department of
3 housing preservation and development shall establish two schedules of
4 certified reasonable costs for items that are included in an abatement
5 of lead-based paint hazards, one covering such abatement that is
6 performed in an eligible dwelling unit or common area located in the
7 targeted area, and one covering such abatement that is performed in an
8 eligible dwelling unit or common area that is not located in the target-
9 ed area. The first such schedules shall be promulgated by the department
10 of housing preservation and development within 180 days of the effective
11 date of this section and shall be used for any such abatements that are
12 commenced on or after August 2, 2004. Such schedules shall be reviewed
13 by such department biennially following their effective dates and
14 amended as necessary. Notwithstanding any other provision of law or
15 rule, an owner who performs an abatement of lead-based paint hazards
16 pursuant to this paragraph shall not be required to comply with subdivi-
17 sion y of this section which provides for filing of a notice of intent
18 form prior to the commencement of work, and no additional fee or penalty
19 shall be due and owing the department at the time of issuance of a
20 certificate of eligibility and reasonable cost for failure to file such
21 notice of intent.

22 2. "Existing dwelling": except as hereinafter provided in subdivision
23 d of this section, a class A multiple dwelling or a building consisting
24 of one or two dwelling units over space used for commercial occupancy in
25 existence prior to the commencement of alterations for which tax
26 exemption and abatement is claimed under the terms of this section and
27 for which a valuation appears on the annual record of assessed valuation
28 of the city for the fiscal year immediately preceding the commencement
29 of such alterations and improvements.

30 3. "Start" an alteration or improvement: begin any physical operation
31 undertaken for the purpose of making alterations or improvements to an
32 existing dwelling.

33 4. "Complete" an alteration or improvement: conclude or terminate any
34 physical operation such as is referred to in paragraph three of this
35 subdivision, to an extent or degree which renders such building capable
36 of use for the purpose for which the improvements or alterations were
37 intended.

38 5. "Multiple dwelling": multiple dwellings as that term is defined in
39 section four of the multiple dwelling law.

40 6. "Moderate rehabilitation": shall mean a scope of work which
41 (a) includes a building-wide replacement of a major component of one
42 of the following systems:

- 43 (1) Elevator
- 44 (2) Heating
- 45 (3) Plumbing
- 46 (4) Wiring
- 47 (5) Window; and

48 (b) has a certified reasonable cost of not less than twenty-five
49 hundred dollars, exclusive of any certified reasonable cost for ordinary
50 repairs, for each dwelling unit in existence at the commencement of the
51 rehabilitation; except that the department of housing preservation and
52 development may establish a minimum certified reasonable cost to be
53 greater than twenty-five hundred dollars per dwelling unit pursuant to
54 subdivision m of this section.

55 7. "Substantially occupied": shall mean an occupancy of not less than
56 sixty percent of all dwelling units immediately prior and during reha-

1 bilitation, except that the department of housing preservation and
2 development may establish higher percentages of occupancy pursuant to
3 subdivision m of this section.

4 8. "Private dwelling" shall mean any building or structure designed
5 and occupied for residential purposes by not more than two families.
6 Private dwellings shall also be deemed to include a series of one-family
7 or two-family dwelling units each of which faces or is accessible to a
8 legal street or public thoroughfare, if each such dwelling unit is
9 equipped as a separate dwelling unit with all essential services, and if
10 each such unit is arranged so that it may be approved as a legal one-fa-
11 mily or two-family dwelling.

12 b. Subject to the limitations provided in subdivision d of this
13 section and the restrictions in this section on conversion of buildings
14 used in whole or in part for single room occupancy, any increase in the
15 assessed valuation of real property shall be exempt from taxation for
16 local purposes to the extent such increase results from the reasonable
17 cost of: (1) the conversion of a class B multiple dwelling to a class A
18 multiple dwelling except insofar as the gross cubic content of such
19 building is increased thereby; or (2) the conversion of any nonresiden-
20 tial building or structure situated in the county of Richmond to a class
21 A multiple dwelling except insofar as the gross cubic content of such
22 building or structure is increased thereby; or (3) alterations or
23 improvements to the exterior of an otherwise eligible building or struc-
24 ture visible from a public street pursuant to a permit issued by the
25 landmarks commission with respect to a designated historic or landmark
26 site or structure; or (4) alterations or improvements constituting a
27 moderate rehabilitation of a substantially occupied class A multiple
28 dwelling except insofar as the gross cubic content of such building or
29 structure is increased thereby; or (5) alterations or improvements to an
30 otherwise eligible building or structure commenced after January first,
31 nineteen hundred eighty designed to conserve the use of fuel, electric-
32 ity or other energy sources or to reduce demand for electricity, includ-
33 ing the installation of meters for purposes of measuring the amount of
34 electricity consumed for each dwelling unit, and conversions of direct
35 metering to a system that includes a master meter and submeters in any
36 cooperative, condominium, or housing development fund company organized
37 under article eleven of the private housing finance law; or (6) alter-
38 ations or improvements to existing dwellings to eliminate existing
39 unhealthy or dangerous conditions in any such existing dwelling or
40 replace inadequate and obsolete sanitary facilities in any such existing
41 dwelling, any of which represents fire or health hazards, including as
42 improvements asbestos abatement to the extent such asbestos abatement is
43 required by federal, state or local law, except insofar as the gross
44 cubic content of such existing dwelling is increased thereby; or (7)
45 conversion of residential units qualified for the protection of article
46 seven-C of the multiple dwelling law in buildings or portions thereof
47 registered with the New York city loft board as interim multiple dwell-
48 ings pursuant to such article to units which are in compliance with the
49 standards of safety and fire protection set forth in article seven-B of
50 the multiple dwelling law or to units which have a certificate of occu-
51 pancy as class A multiple dwellings; or (8) alterations or improvements
52 commenced on or after September first, nineteen hundred eighty-seven
53 constituting a substantial rehabilitation of a class A multiple dwell-
54 ing, or a conversion of a building or structure into a class A multiple
55 dwelling, as part of a program to provide housing for low and moderate
56 income households as defined by the department of housing preservation

1 and development pursuant to the rules and regulations promulgated pursu-
2 ant to subdivision m of this section, provided that such alterations or
3 improvements or conversions shall be aided by a grant, loan or subsidy
4 from any federal, state or local agency or instrumentality, including,
5 in the discretion of the department of housing preservation and develop-
6 ment, a subsidy in the form of a below market sale from the city of New
7 York; or (9) alterations or improvements to any private dwelling or
8 conversion of any private dwelling to a multiple dwelling or conversion
9 of any multiple dwelling to a private dwelling, provided that such
10 alterations, improvements or conversions are part of a project that has
11 applied for or is receiving benefits pursuant to this section and shall
12 be aided by a grant, loan or subsidy from any federal, state or local
13 agency or instrumentality. Such conversions, alterations or improvements
14 shall be completed within thirty-six months after the date on which same
15 shall be started except that such thirty-six month limitation shall not
16 apply to conversions of residential units which are registered with the
17 loft board in accordance with article seven-C of the multiple dwelling
18 law pursuant to paragraph eight of this subdivision. Provided, however,
19 a sixty-month period for completion shall be available for alterations
20 or improvements undertaken by a housing development fund company organ-
21 ized pursuant to article eleven of the private housing finance law,
22 which are carried out with the substantial assistance of grants, loans
23 or subsidies from any federal, state or local governmental agency or
24 instrumentality or which are carried out in a property transferred from
25 the city of New York or the city of Staten Island if alterations and
26 improvements are completed within seven years after the date of trans-
27 fer. In addition, the department of housing preservation and development
28 may grant an extension of the period of completion for any project
29 carried out with the substantial assistance of grants, loans or subsi-
30 dies from any federal, state or local governmental agency or instrumen-
31 tality, if such alterations, improvements or conversions are completed
32 within sixty months from commencement of construction. Provided,
33 further, that such conversions, alterations or improvements shall in any
34 event be completed prior to the thirty-first of December in the third
35 year next succeeding the effective date of this section. Exemption for
36 conversions, alterations or improvements pursuant to paragraph one, two,
37 three, four, six, seven, eight or ten of this subdivision shall continue
38 for a period not to exceed fourteen years and begin no sooner than the
39 first tax period immediately following the completion of such conver-
40 sions, alterations or improvements. Exemption for alterations or
41 improvements pursuant to paragraph five or nine of this subdivision
42 shall continue for a period not to exceed thirty-four years and shall
43 begin no sooner than the first tax period immediately following the
44 completion of such alterations or improvements. Such exemption shall be
45 equal to the increase in the valuation, which is subject to exemption in
46 full or proportionally under this subdivision for ten or thirty years,
47 whichever is applicable. After such period of time, the amount of such
48 exempted assessed valuation of such improvements shall be reduced by
49 twenty percent in each succeeding year until the assessed value of the
50 improvements is fully taxable. Provided, however, exemption for any
51 conversions, alterations or improvements, which are aided by a loan or
52 grant under article eight, eight-A, eleven, twelve, fifteen, or twenty-
53 two of the private housing finance law, section six hundred ninety-six-a
54 or section ninety-nine-h of the general municipal law, or section three
55 hundred twelve of the housing act of nineteen hundred sixty-four (42
56 U.S.C.A. 1452b), or the Cranston-Gonzalez national affordable housing

1 act, (42 U.S.C.A. 12701 et. seq.), or started after July first, nineteen
2 hundred eighty-three by a housing development fund company organized
3 pursuant to article eleven of the private housing finance law which are
4 carried out with the substantial assistance of grants, loans or subsi-
5 dies from any federal, state or local governmental agency or instrumen-
6 tality or which are carried out in a property transferred from the city
7 of New York and where alterations and improvements are completed within
8 seven years after the date of transfer may commence at the beginning of
9 any tax period subsequent to the start of such conversions, alterations
10 or improvements and prior to the completion of such conversions, alter-
11 ations or improvements. The assessed valuation of the land occupied by
12 such dwelling and any increase in assessed valuation resulting from
13 conversions, alterations, or improvements other than those made pursuant
14 to this section shall not be affected by the provisions of this section.

15 b-1. Notwithstanding the provisions of subdivision b of this section,
16 alterations, improvements or conversions of any building or structure
17 that are eligible for benefits pursuant to subdivision b of this section
18 except insofar as the gross cubic content of such building or structure
19 is increased thereby shall be eligible for such benefits insofar as the
20 gross cubic content of such building or structure is increased thereby
21 provided that:

22 (1) for all tax lots now existing or hereafter created, at least fifty
23 percent of the floor area of the completed building or structure
24 consists of the pre-existing building or structure that was converted,
25 altered or improved in accordance with subdivision b of this section,
26 and

27 (2) for tax lots now existing or hereafter created within the follow-
28 ing area in the borough of Manhattan, such conversions, alterations or
29 improvements are aided by a grant, loan or subsidy from any federal,
30 state or local agency or instrumentality: beginning at the intersection
31 of the United States pierhead line in the Hudson river and the center
32 line of Chambers street extended, thence easterly to the center line of
33 Chambers street and continuing along the center line of Chambers street
34 to the center line of Centre street, thence southerly along the center
35 line of Centre street to the center line of the Brooklyn Bridge to the
36 intersection of the Brooklyn Bridge and the United States pierhead line
37 in the East river, thence northerly along the United States pierhead
38 line in the East river to the intersection of the United States pierhead
39 line in the East river and the center line of one hundred tenth street
40 extended, thence westerly to the center line of one hundred tenth street
41 and continuing along the center line of one hundred tenth street to its
42 westerly terminus, thence westerly to the intersection of the center
43 line of one hundred tenth street extended and the United States pierhead
44 line in the Hudson river, thence southerly along the United States pier-
45 head line in the Hudson river to the point of beginning.

46 (3) For purposes of this subdivision, "floor area" shall mean the
47 horizontal areas of the several floors or any portion thereof of a
48 dwelling or dwellings and accessory structures on a lot measured from
49 the exterior faces of exterior walls or from the center line of party
50 walls.

51 (4) Nothing in this subdivision shall be construed to provide tax
52 abatement benefits pursuant to subdivision c of this section for the
53 costs attributable to the increased cubic content in any such building
54 or structure.

55 c. (1) Except as provided in paragraphs two, three and four of this
56 subdivision, the taxes upon any real property, including the land, may

1 be abated each year for a period of not more than twenty years by an
2 amount no greater than eight and one-third per centum of the reasonable
3 cost of eligible conversions, alterations or improvements provided in
4 paragraphs one through eight and paragraph ten of subdivision b of this
5 section provided that the abatement in taxes in any consecutive twelve-
6 month period shall in no event exceed the amount of taxes payable in
7 such twelve-month period; and provided further that alterations or
8 improvements pursuant to paragraph four of subdivision b of this section
9 shall only receive the benefits of this section if construction
10 commenced after January first, nineteen hundred seventy-eight and that
11 in no event shall the aggregate abatement exceed ninety per centum of
12 the reasonable cost of conversions, alterations or improvements provided
13 in paragraphs one, three, four, six, seven, and ten of subdivision b of
14 this section, or exceed fifty per centum of the reasonable cost of
15 conversions pursuant to paragraph one of subdivision b of this section
16 if construction commenced after January first, nineteen hundred eighty-
17 two or exceed fifty per centum of the reasonable cost of conversions
18 pursuant to paragraphs two and eight of subdivision b of this section,
19 or exceed one hundred per centum of the reasonable cost of alterations
20 or improvements pursuant to paragraph five of subdivision b of this
21 section provided that where alterations or improvements pursuant to
22 paragraphs four and six of subdivision b of this section are done in
23 conjunction with a conversion pursuant to paragraph two of subdivision b
24 of this section, the aggregate abatement shall not exceed fifty per
25 centum of the reasonable cost. Notwithstanding the foregoing, the taxes
26 upon real property, including the land may be abated for a period of not
27 more than twenty years at eight and one-third per centum of the reason-
28 able cost of conversions where construction actually commenced in good
29 faith prior to July first, nineteen hundred eighty pursuant to an alter-
30 ation permit issued by the department of buildings prior to July first,
31 nineteen hundred eighty provided that the aggregate abatement shall not
32 exceed ninety per centum of the reasonable cost thereof and provided
33 further that in no event shall the abatement in taxes in any twelve-
34 month period exceed the amount of taxes payable in such twelve-month
35 period. In no event, however, shall the aggregate abatement for conver-
36 sions, alterations or improvements pursuant to subdivision b of this
37 section exceed such dollar limit per existing class A dwelling unit or
38 additional unit created by conversion to a class A multiple dwelling as
39 may be established pursuant to rules and regulations promulgated by the
40 department of housing preservation and development pursuant to subdivi-
41 sion m of this section. Only those items of work set forth in the item-
42 ized cost breakdown schedule contained in rules and regulations promul-
43 gated by the department of housing preservation and development pursuant
44 to subdivision m of this section shall be eligible for tax abatement.
45 Such abatement shall commence on the later of July first, nineteen
46 hundred seventy-eight or the first day of the first tax quarter follow-
47 ing the completion of such construction and the filing for benefits as
48 provided in subdivision h of this section except that such period of
49 abatement may commence on the later of the first day of the first tax
50 quarter following commencement of any conversion, alteration or improve-
51 ment or (i) July first, nineteen hundred seventy-six, if aided by a loan
52 pursuant to article eight of the private housing finance law and
53 completed after December thirty-first, nineteen hundred seventy-five; or
54 (ii) July first, nineteen hundred seventy-seven, if aided by a loan
55 pursuant to article fifteen of the private housing finance law; or (iii)
56 July first, nineteen hundred eighty, if aided by a loan pursuant to

1 article eight-A of the private housing finance law; or (iv) July first,
2 nineteen hundred eighty, if aided by a loan pursuant to section three
3 hundred twelve of the housing act of nineteen hundred sixty-four (42
4 U.S.C.A. §1452b); or (v) July first, nineteen hundred ninety-two, if
5 started after such date and aided by a loan or grant under article elev-
6 en, twelve, or twenty-two of the private housing finance law, section
7 six hundred ninety-six-a or section ninety-nine-h of the general munici-
8 pal law, or the Cranston-Gonzalez national affordable housing act (42
9 U.S.C.A. 12701 et seq.); or (vi) July first, nineteen hundred eighty-
10 eight, if started after such date by or on behalf of a company not qual-
11 ified under any of the above provisions, which is a not-for-profit
12 corporation qualified pursuant to section 501(c)(3) of the internal
13 revenue code and which has entered into a regulatory agreement with the
14 local housing agency requiring operation of the property as housing for
15 low and moderate income persons and families.

16 (2) In the case of alterations or improvements pursuant to paragraph
17 five of subdivision b of this section which are carried out with the
18 substantial assistance of grants, loans or subsidies from any federal,
19 state or local agency or instrumentality or any not-for-profit philan-
20 thropic organization one of whose primary purposes is providing low or
21 moderate income housing or financed with mortgage insurance by the New
22 York city residential mortgage insurance corporation or the state of New
23 York mortgage agency or pursuant to a program established by the federal
24 housing administration for rehabilitation of existing multiple dwellings
25 in a neighborhood strategy area as defined by the United States depart-
26 ment of housing and urban development, the abatement of taxes on such
27 property, including the land, shall not exceed the lesser of the actual
28 cost of the alterations or improvements or one hundred fifty per centum
29 of the certified reasonable cost of the alterations or improvements, as
30 determined under regulations of the department of housing preservation
31 and development, and the annual abatement of taxes shall not exceed
32 twelve and one-half per centum of such certified reasonable cost,
33 provided that such abatement shall not be effective for more than twenty
34 years and the annual abatement of taxes in any consecutive twelve-month
35 period shall in no event exceed the amount of taxes payable in such
36 twelve-month period.

37 (3) In the case of alterations or improvements carried out with the
38 substantial assistance of grants, loans or subsidies from any federal,
39 state or local agency or instrumentality or any not-for-profit philan-
40 thropic organization one of whose primary purposes is providing low or
41 moderate income housing, or financed with mortgage insurance by the New
42 York city residential mortgage insurance corporation or the state of New
43 York mortgage agency or pursuant to a program established by the federal
44 housing administration for rehabilitation of existing multiple dwellings
45 in a neighborhood strategy area as defined by the United States depart-
46 ment of housing and urban development where such alterations or improve-
47 ments are done on property located in census tracts in which seventy-
48 five percent or more of the population live in households which earn
49 fifty percent or less of the median household income of the city, the
50 abatement of taxes on such property, including the land, shall not
51 exceed the lesser of the actual cost of the alterations or improvements
52 or one hundred fifty per centum of the certified reasonable cost of the
53 alterations or improvements, as determined under regulations of the
54 department of housing preservation and development, and the annual
55 abatement of taxes shall not exceed twelve and one-half per centum of
56 such certified reasonable cost, provided that such abatement shall not

1 be effective for more than twenty years and the annual abatement of
2 taxes in any consecutive twelve-month period shall in no event exceed
3 the amount of taxes payable in such twelve-month period.

4 (4) In the case of alterations, improvements or conversions pursuant
5 to paragraph eight of subdivision b of this section, the abatement of
6 taxes on such property, including the land, shall not exceed the lesser
7 of the actual cost of the alterations or improvements or one hundred
8 fifty per centum of the certified reasonable cost of the alterations or
9 improvements, as determined under regulations of the department of hous-
10 ing preservation and development, and the annual abatement of taxes
11 shall not exceed twelve and one-half per centum of such certified
12 reasonable cost, provided that such abatement shall not be effective for
13 more than twenty years and the annual abatement of taxes in any consec-
14 utive twelve-month period shall in no event exceed the amount of taxes
15 payable in such twelve-month period.

16 d. The benefits of this section shall apply:

17 (1) to any multiple dwelling which is altered, improved or increased
18 in valuation with aid of a loan provided by the city of New York or the
19 city of Staten Island, the New York city housing development corporation
20 or the United States department of housing and urban development for the
21 elimination of conditions dangerous to human life or detrimental to
22 health, including nuisances as defined in section three hundred nine of
23 the multiple dwelling law, or other rehabilitation or improvement wheth-
24 er or not all of the units thereof were in existence prior to rehabili-
25 tation pursuant to the provisions of: (i) article two, eight or eight-A
26 of the private housing finance law provided that such dwelling is made
27 available solely to persons or families of low income as defined in said
28 articles, (ii) article twelve of the private housing finance law, (iii)
29 article fifteen of the private housing finance law or (iv) any federal
30 law where the multiple dwelling is supervised or regulated by the United
31 States department of housing and urban development.

32 (2) except as hereinafter provided, to any building or structure which
33 is converted to a class A multiple dwelling or to any existing dwelling
34 which is substantially rehabilitated, and further provided that the
35 rents subsequent to conversion or substantial rehabilitation shall not
36 exceed such amount as may be fixed: (i) by the United States department
37 of housing and urban development, (ii) pursuant to the private housing
38 finance law of the state of New York, or (iii) pursuant to chapter three
39 or chapter four of title twenty-six of the code of the preceding munici-
40 pality, provided that the initial legal regulated rent for the dwelling
41 units shall be the rent charged and paid by the initial tenant and
42 registered with the New York state division of housing and community
43 renewal. Buildings or structures which are converted to class A multiple
44 dwellings and existing dwellings which are substantially rehabilitated
45 shall contain bedrooms in a number equal to at least fifty percent of
46 the apartments created where an alteration permit has been issued by the
47 department of buildings prior to April first, nineteen hundred eighty
48 and seventy-five percent of the apartments created where an alteration
49 permit has been issued by the department of buildings on or after April
50 first, nineteen hundred eighty provided, however, that if a building or
51 structure is converted from a non-residential use to a class A multiple
52 dwelling and the units therein contain an average floor area of one
53 thousand square feet, such requirement as to the number of bedrooms
54 shall not be applicable and if an existing dwelling is substantially
55 rehabilitated, the seventy-five percent bedroom requirement shall be
56 reduced to the extent its application would necessitate a reduction in

1 the number of units which are contained in the existing dwelling prior
2 to commencement of substantial rehabilitation.

3 (3) to any multiple dwelling, building or structure otherwise eligible
4 for any of the benefits of this section which:

5 (i) is operated exclusively for the benefit of persons or families who
6 are or will be entitled to occupancy by reason of ownership of stock or
7 membership in the corporate owner, or for the benefit of such persons or
8 families and other persons or families entitled to occupancy under
9 applicable provisions of law without ownership of stock or membership in
10 the corporate owner, or (ii) is owned as a condominium and is occupied
11 as the residence or home of three or more families living independently
12 of each other; provided, however, that, in addition to all other condi-
13 tions of eligibility for the benefits of this section, except for multi-
14 ple dwellings in which units have been newly created by substantial
15 rehabilitation of vacant buildings or conversions of non-residential
16 buildings, the availability of benefits under this section for such
17 multiple dwellings, buildings or structures shall be conditioned on the
18 following: (a) alterations or improvements to at least one building-wide
19 system are part of the application for benefits, and (b) (i) the
20 assessed valuation of such multiple dwelling, building, or structure,
21 including land, shall not exceed an average of thirty thousand dollars
22 per dwelling unit at the time of the commencement of the alterations or
23 improvements, and (ii) during the three years immediately preceding the
24 commencement of the alterations or improvements the average per room
25 sale price of the dwelling units or the stock allocated to such dwelling
26 units shall have been no greater than thirty-five percent of the maximum
27 mortgage amount for a single family home eligible for purchase by the
28 Federal National Mortgage Association; provided that if less than ten
29 percent of the dwelling units or an amount of stock less than the amount
30 allocable to ten percent of such dwelling units was not transferred
31 during such preceding three year period, eligibility for benefits shall
32 be conditioned upon the multiple dwelling, building, or structure having
33 an assessed valuation per dwelling unit of no more than twenty-five
34 thousand dollars at the time of the commencement of the alterations or
35 improvements. Provided, further, that such benefits shall be available
36 only for alterations or improvements commenced on or after June first,
37 nineteen hundred eighty-six.

38 Notwithstanding the foregoing, the benefits of this section shall be
39 available for any alterations or improvements commenced after August
40 seventh, two thousand eight for such multiple dwellings, buildings or
41 structures and shall be conditioned on the following: (1) the applica-
42 tion for benefits may include any item of work designated in the rules
43 adopted by the department of housing preservation and development as a
44 major capital improvement or asbestos abatement to the extent such
45 asbestos abatement is required by federal, state and local law; and (2)
46 (i) the assessed valuation of such multiple dwelling, building or struc-
47 ture, including land, shall not exceed an average of forty thousand
48 dollars per dwelling unit at the time of the commencement of the alter-
49 ations or improvements; and (ii) the average per room sale price of the
50 dwelling units or the stock allocated to such dwelling units shall have
51 been no greater than thirty-five percent of the maximum mortgage amount
52 for a single family home eligible for purchase by the Federal National
53 Mortgage Association during the three years immediately preceding the
54 commencement of the alterations or improvements; provided that if less
55 than ten percent of the dwelling units or an amount of stock less than
56 the amount allocable to ten percent of such dwelling units was not

1 transferred during such preceding three-year period, eligibility for
2 benefits shall be conditioned upon the multiple dwelling, building, or
3 structure having an assessed valuation per dwelling unit of no more than
4 forty thousand dollars at the time of the commencement of the alteration
5 or improvement. Provided, however, benefits shall also be available
6 under this section for work completed in any such multiple dwelling,
7 building or structure within the first three years of its conversion to
8 cooperative or condominium ownership, as evidenced by the date on which
9 the first closing in a condominium to a bona fide purchaser occurs or in
10 the case of a cooperative, the date on which the shares allocable to a
11 unit are conveyed to a bona fide purchaser, provided, however, that the
12 availability of such benefits for conversions, alterations or improve-
13 ments commenced prior to June first, nineteen hundred eighty-six, except
14 with respect to governmentally assisted projects as defined in regu-
15 lations issued by the department of housing preservation and develop-
16 ment, shall be conditioned upon the completion of such conversions,
17 alterations or improvements within three years after acceptance for
18 filing of the prospectus to establish such cooperative or condominium
19 entity by the attorney general of the state of New York. The maximum
20 amount of tax abatement which may be received in any tax period under
21 this section by any such multiple dwelling, building or structure for
22 any alterations and improvements commenced three or more years after its
23 initial conversion to cooperative or condominium ownership shall be
24 limited to an amount not in excess of two thousand five hundred dollars
25 per dwelling unit of the certified reasonable cost of the alterations or
26 improvements as determined under regulations of the department of hous-
27 ing preservation and development.

28 (3-a) Notwithstanding any contrary provision of paragraph three of
29 this subdivision, the availability of any benefits under this section to
30 any multiple dwelling, building or structure owned and operated by a
31 limited-profit housing company established pursuant to article two of
32 the private housing finance law shall not be conditioned upon the
33 assessed valuation of such multiple dwelling, building or structure,
34 including land, as calculated as an average dollar amount per dwelling
35 unit, at the time of the commencement of the alterations or improve-
36 ments; provided, however, that such limited-profit housing company (i)
37 is organized and operating as a mutual company, (ii) continues to be
38 organized and operating as a mutual company and to own and operate the
39 multiple dwelling, building or structure receiving such benefits, and
40 (iii) has entered into a binding and irrevocable agreement with the
41 commissioner of housing of the state of New York, the supervising agen-
42 cy, the New York city housing development corporation, or the New York
43 state housing finance agency prohibiting the dissolution or reconsti-
44 tution of such limited-profit housing company pursuant to section thir-
45 ty-five of the private housing finance law for not less than fifteen
46 years from the commencement of such benefits. For the purposes of this
47 paragraph, the terms "mutual company" and "supervising agency" shall
48 have the same meanings as set forth in section two of the private hous-
49 ing finance law.

50 (4) provided that, in the case of any building or structure: (i) in
51 which conversion, alteration or improvement commences on or after Janu-
52 ary first, nineteen hundred eighty-two, and (ii) which is located within
53 an area designated herein as a minimum tax zone, the benefits of this
54 section shall not be applied to abate or reduce the taxes upon the land
55 portion of such real property, which shall continue to be taxed based
56 upon the assessed valuation of the land and the applicable tax rate at

1 the time such taxes are levied; provided, however, that the foregoing
2 limitation with respect to abatement of taxes shall not apply:

3 (A) to any multiple dwelling which is eligible for benefits based upon
4 moderate rehabilitation pursuant to paragraph four of subdivision b of
5 this section, or (B) to any multiple dwelling which is governmentally
6 assisted as such term is defined in regulations to be promulgated by the
7 department of housing preservation and development pursuant to subdivi-
8 sion m of this section.

9 (5) provided that, in the case of any building or structure: (i) in
10 which conversion, alteration or improvement commences on or after Janu-
11 ary first, nineteen hundred eighty-two, and (ii) which is located within
12 an area designated herein as a tax abatement exclusion zone, the bene-
13 fits of this section shall not be applied to abate or reduce the taxes
14 upon such real property, which shall continue to be taxed based upon the
15 assessed valuation of the land and the improvements and the applicable
16 tax rate at the time such taxes are levied; provided, however, that the
17 foregoing limitation shall not deprive such real property of any bene-
18 fits of exemption from taxation of an increase in assessed valuation to
19 which it is entitled pursuant to this section; provided, however, that
20 the foregoing limitation with respect to abatement of taxes shall not
21 apply:

22 (A) to any alteration or improvement designated as a major capital
23 improvement, by the regulations promulgated by the department of housing
24 preservation and development pursuant to subdivision m of this section,
25 provided that the maximum amount of tax abatement which may be received
26 in any tax period under this section by any such multiple dwelling,
27 building or structure for any alterations and improvements shall be
28 limited to an amount not in excess of twenty-five hundred dollars per
29 dwelling unit of the certified reasonable cost of the alterations and
30 improvements as determined under regulations of the department of hous-
31 ing preservation and development, or (B) to any multiple dwelling which
32 is governmentally assisted as such term is defined by said regulations.

33 (8) Limitation on benefits. (a) The provisions of this paragraph shall
34 apply to all conversions, alterations and improvements except the
35 following:

36 (i) alterations or improvements under paragraphs three, five and six
37 of subdivision b of this section, where carried out:

38 (A) with the substantial assistance of grants, loans or subsidies from
39 any federal, state or local agency or instrumentality, or any not-for-
40 profit philanthropic organization one of whose primary purposes is
41 providing low or moderate incoming housing; or

42 (B) with mortgage insurance by the New York city residential mortgage
43 insurance corporation or the state of New York mortgage agency; or

44 (C) in the areas bounded and described as follows:

45 AREAS IN THE COUNTY OF RICHMOND:

46 PORT RICHMOND--The area bounded by the Kill Van Kull; Jewett Avenue
47 and its prolongation; Forest Avenue; and, the Willow Brook Expressway.

48 NEW BRIGHTON--The area bounded by the Kill Van Kull; Westervelt
49 Avenue; Brook Street; Castleton Avenue; and, North Randall Avenue and
50 its prolongation.

51 STAPLETON--The area bounded by Victory Boulevard; the Upper New York
52 Bay; Vanderbilt Avenue; Van Duzer Street; Cebra Avenue; and, St. Pauls
53 Avenue.

54 FOX HILLS--The area bounded by Vanderbilt Avenue; the Upper New York
55 Bay; the Staten Island Rapid Transit Railway right of way; and, the
56 Staten Island Expressway.

1 (D) pursuant to a program established by the federal housing adminis-
2 tration, federal national mortgage association, federal home loan mort-
3 gage corporation or government national mortgage association for the
4 rehabilitation of existing multiple dwellings for persons of low or
5 moderate income, or a program of mortgage insurance for the rehabili-
6 tation of existing multiple dwellings pursuant to section two hundred
7 twenty-three-f of the national housing act, as amended, or a program of
8 mortgage insurance established by the federal housing administration for
9 the rehabilitation of existing multiple dwellings for persons of low or
10 moderate income; provided that properties receiving benefits under such
11 programs are located in a neighborhood strategy area, as defined, by the
12 United States department of housing and urban development, or in one of
13 the areas listed in subparagraph (C) of this paragraph.

14 (ii) alterations or improvements under paragraph four of subdivision b
15 of this section; and

16 (iii) conversion of residential units qualified for the protection of
17 article seven-C of the multiple dwelling law under paragraph seven of
18 subdivision b of this section.

19 (b) Abatement limitations. (i) The amount of abatement under subdivi-
20 sion c of this section shall not exceed the certified reasonable cost of
21 the conversion, alteration or improvement, as determined under regu-
22 lations of the department of housing preservation and development,
23 provided that the amount of certified reasonable cost eligible for
24 abatement under this section shall not exceed fifteen thousand dollars
25 for a dwelling unit of three and one-half rooms, as determined under the
26 applicable zoning resolution, and a comparable amount for dwelling units
27 of other sizes, determined under regulations of the department of hous-
28 ing preservation and development, and further provided that the amount
29 of certified reasonable cost eligible for abatement under this section
30 may exceed fifteen thousand dollars or such comparable amount per dwell-
31 ing unit, but not more than twenty-five percent above such amount, upon
32 application of the property owner and a determination by the department
33 of housing preservation and development that:

34 (A) in the case of a conversion under paragraph one or two of subdivi-
35 sion b of this section, the increased cost is necessary to comply with
36 applicable law;

37 (B) in the case of an alteration or improvement under paragraph six of
38 subdivision b of this section, the increased cost is necessary to elimi-
39 nate the unhealthy or dangerous conditions or replace the inadequate and
40 obsolete facilities in a satisfactory manner;

41 (C) in the case of an alteration or improvement under paragraph five
42 of subdivision b of this section, the increased cost is necessary to
43 conserve energy in a satisfactory manner; or

44 (D) in the case of an alteration or improvement under paragraph three
45 of subdivision b of this section, the increased cost, to the extent such
46 cost is not offset by any and all tax credits received as a result of
47 the alteration or improvement, is necessary to comply with any provision
48 of law regulating historic or landmark buildings or structures.

49 (ii) Notwithstanding any other provisions of this subparagraph, and in
50 addition to all other conditions of eligibility for the benefits of this
51 section, the availability of abatements pursuant to subdivision c of
52 this section for any multiple dwellings, buildings or structures not
53 owned as a condominium or cooperative, except for multiple dwellings in
54 which units have been newly created by substantial rehabilitation of
55 vacant buildings or conversions of non-residential buildings, shall be
56 conditioned on the assessed valuation of such multiple dwelling, build-

1 ing or structure, including land, not exceeding an average of thirty
2 thousand dollars per dwelling unit at the time of commencement of the
3 alterations or improvements, provided, however, that such average shall
4 not exceed forty thousand dollars per dwelling unit at the time of
5 commencement of the alteration or improvement for alterations or
6 improvements commenced after the effective date of this paragraph.

7 (c) Exemption limitations. (i) The increase in assessed valuation of
8 the real property resulting from the conversion, alteration or improve-
9 ment under subdivision b of this section, shall be exempt from taxation
10 as provided in this section, only to the extent provided in this subpar-
11 agraph, provided that this subparagraph shall not apply to any conver-
12 sions, alterations or improvements commenced on or after June first,
13 nineteen hundred eighty-six. The amount of the increased assessed valu-
14 ation that is exempt from taxation shall depend on the amount of the
15 total assessed value per dwelling unit calculated by dividing the amount
16 of the total assessed valuation of the property, as determined under the
17 real property tax law, by the number of dwelling units in the building
18 after completion of the conversion, alteration or improvement. The
19 amount of increased assessed valuation that will be exempt from taxation
20 for buildings with total assessed valuation per dwelling unit of less
21 than thirty-eight thousand dollars shall be calculated pursuant to the
22 following formula: (A) any portion of total assessed valuation of the
23 property attributable to the first eighteen thousand dollars of total
24 assessed valuation per dwelling unit, to the extent it represents
25 increased assessed valuation, shall be one hundred percent exempt; (B)
26 any portion of total assessed valuation attributable to the next four
27 thousand dollars of total assessed valuation per dwelling unit, to the
28 extent it represents increased assessed valuation, shall be seventy-five
29 percent exempt; (C) any portion of total assessed valuation attributable
30 to the next four thousand dollars of total assessed valuation per dwell-
31 ing unit, to the extent it represents increased assessed valuation,
32 shall be fifty percent exempt; (D) any portion of total assessed valu-
33 ation attributable to the next four thousand dollars of total assessed
34 valuation per dwelling unit, to the extent it represents increased
35 assessed valuation, shall be twenty-five percent exempt; and (E) any
36 portion of total assessed valuation attributable to the next eight thou-
37 sand dollars of total assessed valuation per dwelling unit, to the
38 extent it represents increased assessed valuation per dwelling unit,
39 shall be fully taxable. Property with a total assessed valuation per
40 dwelling unit of thirty-eight thousand dollars or more shall not be
41 eligible for a tax exemption under this section.

42 (ii) In calculating the amount of increased assessed valuation that
43 will be exempt from taxation pursuant to the formula in clause (i) of
44 this subparagraph, the full amount of total assessed valuation that does
45 not represent increased assessed valuation shall be applied in such
46 formula prior to the inclusion of any amount of increased assessed valu-
47 ation.

48 (iii) Where the real property is occupied in part for residential
49 purposes and in part for non-residential purposes, the assessed valu-
50 ation of the property shall be appropriately allocated between the resi-
51 dential and non-residential portions. In computing the total assessed
52 valuation per dwelling unit under this subparagraph, only the amount of
53 valuation so allocated to the residential portion shall be considered.

54 (iv) Commencing with the assessment roll for the year nineteen hundred
55 eighty-four, where there has been a change in the level of assessment
56 from the assessment roll of the prior year of properties receiving

1 exemptions under this section, the department of finance may petition
2 the state board to certify the percentage of such change for the
3 purposes of this section. In such petition, the department of finance
4 shall submit such information as the state board shall require in order
5 to certify the percentage of such change. The state board may also make
6 such a certification on its own motion. Upon receipt of such certifi-
7 cation from the state board, the department of housing preservation and
8 development may modify the dollar values of total assessed valuation per
9 dwelling unit in clause (i) of this subparagraph to reflect the percent-
10 age change in the level of assessment as shown in such certification. As
11 used in this subparagraph, the term "change in the level of assessment"
12 means the net increase or decrease in the assessed valuation of proper-
13 ties in the assessing unit that received exemptions under this section
14 in the current year as compared to those that received exemptions under
15 this section in the prior year as a result of assessing such properties
16 at a higher or lower ratio of full value.

17 (v) (A) Notwithstanding the provisions of clause (i) of this subpara-
18 graph, the department of housing preservation and development may reduce
19 or remove the limitations on the exemption from taxation provided in
20 such clause with respect to a particular property undergoing alteration
21 or improvement, upon application of the property owner and a determi-
22 nation by such department that the increased benefit will increase the
23 number of dwelling units that will be affordable to persons of low and
24 moderate income, and the increased benefit is necessary to make econom-
25 ically viable units or improvement in the quality of dwelling units that
26 will be affordable to persons of low or moderate income.

27 (B) As used in this subparagraph, the term "persons of low or moderate
28 income" shall mean persons who would qualify for housing subsidies
29 pursuant to section two hundred thirty-five of the national housing act,
30 as amended, at one hundred thirty-five percent of the income limitations
31 provided therein.

32 (C) Upon receiving an application under this subparagraph in proper
33 form, the department of housing preservation and development shall imme-
34 diately submit it to the community board for the area in which the
35 project is located, which may, within forty-five days of receiving it
36 and after a public hearing, make recommendations to the department as to
37 the application. The department shall act on the application within
38 sixty days of receiving it from the property owner in proper form, but
39 not before expiration of the time for the community board to make its
40 recommendations, unless the board has acted sooner.

41 (d) The department of housing preservation and development may set
42 forth preliminarily the terms of a determination under subparagraph (b)
43 or (c) of this paragraph prior to the commencement of the conversion,
44 alteration or improvement. Any such determination shall take effect
45 after completion of the work in accordance with the terms of the appli-
46 cation made by the property owner.

47 (e) Any determination of the department of housing preservation and
48 development to increase an abatement under subparagraph (b) of this
49 paragraph, or to reduce or remove the exemption limitations under
50 subparagraph (c) of this paragraph shall state the basis for the deter-
51 mination and the data on which the determination was based. Such deter-
52 mination shall be published in the City Record for five consecutive days
53 after the determination is rendered.

54 e. Notwithstanding any provision of this section or any other section
55 of the code to the contrary, where such dwelling is in an area where a
56 plan of redevelopment, program of neighborhood improvement, housing

1 maintenance, demonstration rehabilitation or concentrated code enforce-
2 ment is being carried out, the rents subsequent to conversion, alter-
3 ation or improvement may exceed the maximum amount allowable pursuant to
4 chapter four of title twenty-six of the code of the preceding municipi-
5 pality where necessity for the adjustment of such rents is certified by
6 the department of housing preservation and development.

7 f. Subject to the provisions of subdivision d of this section, the
8 department of housing preservation and development shall determine and
9 certify the reasonable cost of any such conversions, alterations or
10 improvements and eligibility for the benefits of this section and for
11 that purpose may adopt rules and regulations, administer oaths to and
12 take the testimony of any person, including but not limited to the owner
13 of such property, may issue subpoenas requiring the attendance of such
14 persons and the production of such bills, books, papers or other docu-
15 ments as it shall deem necessary, may make preliminary estimates of the
16 maximum reasonable cost of such conversions, alterations or improve-
17 ments, may establish maximum allowable costs of specified units,
18 fixtures or work in such conversions, alterations or improvements, and
19 may require the submission of plans and specifications of such conver-
20 sions, alterations or improvements, and may require the submission of
21 plans and specifications of such conversions, alterations or improve-
22 ments before the start thereof. Applications for certification shall
23 include all bills and other documents showing the cost of construction
24 or such other evidence of such cost as shall be satisfactory to the
25 department of housing preservation and development, including, without
26 limitation, certification of cost by a certified public accountant in
27 accordance with generally accepted accounting principles. Applications
28 for certification for a building eligible for benefits pursuant to para-
29 graph three of subdivision d of this section, for alterations or
30 improvements completed more than three years after its conversion to
31 cooperative or condominium ownership, shall include such documentation
32 of the sale price of dwelling units or stock allocated to such dwelling
33 units as may be required by the department of housing preservation and
34 development, including but not limited to certification of sales price
35 by a certified public accountant. In addition, such applications shall
36 contain the consent of the applicant to allow the department of housing
37 preservation and development access to records, including but not limit-
38 ed to other tax records, as the department may deem appropriate to
39 enforce such conditions of eligibility. Applications for certification
40 filed on or after January first, nineteen hundred seventy-nine pursuant
41 to paragraphs one through six and paragraph eight of subdivision b of
42 this section shall be made after completion and within forty-eight
43 months following the start of construction of the conversion, alteration
44 or improvement, except that applications for certification for alter-
45 ations or improvements undertaken by a housing development fund company
46 organized pursuant to article eleven of the private housing finance law,
47 which are carried out with the substantial assistance of grants, loans
48 or subsidies from any federal, state or local governmental agency or
49 instrumentality or which are carried out in a property transferred from
50 the city of New York or city of Staten Island shall be made after
51 completion and within seventy-two months following the start of the
52 construction of the alteration or improvement. Provided, however, the
53 department of housing preservation and development is empowered to grant
54 an extension of the period for application for any project carried out
55 with the substantial assistance of loans, grants or subsidies from any
56 federal, state or local governmental agency or instrumentality, if such

1 application is made within seventy-two months from commencement of
2 construction. Applications for certification pursuant to paragraph seven
3 of subdivision b of this section shall be filed within twelve months of
4 the date of completion as provided by such subdivision.

5 g. To the end that conversions, alterations or improvements in such
6 property shall interfere as little as practicable with the clearance,
7 rehabilitation or rebuilding of sub-standard and insanitary areas and
8 shall be confined to buildings and structures which are structurally
9 sound and comply with applicable provisions of law, eligibility for the
10 benefits of this section shall be restricted to such buildings and
11 structures which the department of housing preservation and development
12 shall certify:

13 (1) to be structurally sound and to comply with applicable provisions
14 of law, as determined by the department of buildings, which certifi-
15 cation shall be evidenced by a certificate describing the property
16 involved;

17 (2) if in an area for which a final plan of clearance, replanning,
18 reconstruction, rehabilitation, or redevelopment has been approved
19 pursuant to article fifteen of the general municipal law, or if in an
20 area for which an urban renewal plan or tests, studies or demonstrations
21 have been approved pursuant to article fifteen of the general municipal
22 law, to be improved in conformity with such replanning, reconstruction,
23 rehabilitation, redevelopment, tests, studies, demonstrations or plan;
24 and

25 (3) if in an area where a program of local neighborhood improvement or
26 housing maintenance is being carried out, to be in conformity with such
27 program.

28 h. Application forms for the benefits of this section shall be filed
29 with the department of finance within the time periods to be established
30 by rules and regulations promulgated by the department of housing pres-
31 ervation and development pursuant to subdivision m of this section. The
32 department of finance shall certify the amount of taxes to be abated,
33 pursuant to the certification of the department of housing preservation
34 and development as herein provided. No such application shall be
35 accepted unless accompanied by a copy of the certificate of the depart-
36 ment of housing preservation and development both as to reasonable cost
37 and as to eligibility as provided in subdivision f of this section.

38 i. The benefits of this section shall not apply:

39 (1) except as provided in subdivision d of this section, to any exist-
40 ing dwelling which is not subject to the provisions of the emergency
41 housing rent control law or to the city rent and rehabilitation law or
42 to the city rent stabilization law or to the private housing finance law
43 or to any federal law providing for supervision or regulation by the
44 United States department of housing and urban development;

45 (2) to any private dwelling, notwithstanding any other provision of
46 this section, unless it is in an area where a plan of redevelopment or
47 program of neighborhood improvement, housing maintenance, demonstration
48 rehabilitation or concentrated code enforcement is being carried out and
49 the department of housing preservation and development finds that the
50 conversion, alteration or improvement is in conformity with such plan of
51 redevelopment, or program of neighborhood improvement, housing mainte-
52 nance, demonstration rehabilitation or concentrated code enforcement;
53 provided that, however, for the purposes of this section, a class A
54 multiple dwelling may be deemed to include any garden-type maisonette
55 dwelling project consisting of a series of dwelling units which together
56 and in their aggregate were arranged or designed to provide three or

1 more apartments and are provided as a group collectively with all essen-
2 tial services such as, but not limited to, water supply, house sewers
3 and heat, and which are in existence and operated as a unit under single
4 ownership on the date upon which an application for the benefits of this
5 section is received by the department of housing preservation and devel-
6 opment, even though certificates of occupancy were issued for portions
7 thereof as private dwellings;

8 (3) to any property receiving tax exemption or abatement concurrently
9 for rehabilitation or new construction under any other provision of New
10 York state, city of New York or city of Staten Island law with the
11 exception of any alteration or improvement to property receiving such
12 tax exemption or abatement under the provisions of the private housing
13 finance law, provided, however, that the benefits of this section shall
14 not apply to any alterations or improvements done in connection with the
15 refinancing, pursuant to section 223f of the national housing act, as
16 amended, of a housing project organized pursuant to article two and
17 article four of the private housing finance law;

18 (4) to any multiple dwelling for ordinary repairs and normal replace-
19 ment of maintenance items, as provided in paragraph one of subdivision
20 a, hereof in the event that the dwelling thereof is receiving the bene-
21 fits of this section for other ordinary repairs and normal replacement
22 of maintenance items as of the December thirty-first preceding the date
23 of application;

24 (5) to the conversion of any building or structure, or portion there-
25 of:

26 (i) which is located in the city of Staten Island where residential
27 conversion as of right is not permitted by the zoning resolution;

28 (ii) where such benefits are eliminated by regulations to be promul-
29 gated by the department of housing preservation and development pursuant
30 to subdivision m of this section, unless, in the case of a building or
31 structure in Richmond county, construction actually commenced prior to
32 October first, nineteen hundred eighty-three, pursuant to an alteration
33 permit. A copy of any proposed regulation pursuant to this paragraph
34 shall be transmitted to the city council not less than sixty days prior
35 to its publication in the City Record, pursuant to section eleven
36 hundred five of the charter of the preceding municipality as it existed
37 on the first of January, in the year next succeeding the effective date
38 of this section; and

39 (iii) provided that the provisions of this paragraph shall not apply
40 to conversions pursuant to paragraph seven of subdivision b of this
41 section.

42 (6) to any conversion of or alteration or improvement, commenced on or
43 after July first, nineteen hundred eighty-two, to any class B multiple
44 dwelling or class A multiple dwelling used in whole or in part for
45 single room occupancy, regardless of the status or use of the building
46 after the conversion, alteration or improvement unless such conversion,
47 alteration or improvement is carried out with the substantial assistance
48 of grants, loans or subsidies from any federal, state or local agency or
49 instrumentality.

50 (7) to any conversion of or alteration or improvement, commenced on or
51 after the effective date of this paragraph, to any property classified
52 under the zoning resolution as a non-profit institution with sleeping
53 accommodations, regardless of the status or use of the building after
54 the conversion, alteration or improvement unless such conversion, alter-
55 ation or improvement is carried out with the substantial assistance of

1 grants, loans or subsidies from any federal, state or local agency or
2 instrumentality.

3 j. Notwithstanding the provisions of the multiple dwelling law, or any
4 local law, ordinance, provisions of this code, rule or regulation, any
5 dwelling to which alterations and improvements are made pursuant to this
6 section and which did not require a certificate of occupancy on April
7 second, nineteen hundred forty-five, may be occupied lawfully after such
8 date upon the completion of such alterations and improvements without
9 such a certificate being obtained, provided, however, that such alter-
10 ations and improvements shall have been made in conformity with law and
11 the applicable provisions for fire protection required by articles six
12 and seven of the multiple dwelling law.

13 k. No owner of a dwelling to which the benefits of this section shall
14 be applied, nor any agent, employee, manager or officer of such owner
15 shall directly or indirectly deny to any person because of race, color,
16 creed, national origin, gender, sexual orientation, disability, marital
17 status, age, religion, alienage or citizenship status, or the use of,
18 participation in, or being eligible for a governmentally funded housing
19 assistance program, including, but not limited to, the section 8 housing
20 voucher program and the section 8 housing certificate program, 42 U.S.C.
21 1437 et seq., or the senior citizen rent increase exemption program,
22 pursuant to either chapter seven of title twenty-six of the code of the
23 preceding municipality or section 26-509 of such code, any of the dwell-
24 ing accommodations in such property or any of the privileges or services
25 incident to occupancy therein. The term "disability" as used in this
26 subdivision shall have the meaning set forth in section 8-102 of the
27 code of the preceding municipality. Nothing in this subdivision shall
28 restrict such consideration in the development of housing accommodations
29 for the purpose of providing for the special needs of a particular
30 group.

31 l. Any person who shall knowingly and willfully make any false state-
32 ment as to any material matter in any application for the benefits of
33 this section shall be guilty of an offense punishable by a fine of not
34 more than five hundred dollars or imprisonment for not more than ninety
35 days, or both. The commissioner of the department of housing preserva-
36 tion and development may reduce or revoke past and future exemption or
37 tax abatement authorized pursuant to this section if the application for
38 tax exemption or tax abatement contains a false statement or false
39 information as to a material matter or omits a material matter.

40 m. Each agency or department to which functions are assigned by this
41 section may adopt and promulgate rules and regulations for the effectua-
42 tion of the purpose of this section.

43 n. The department of housing preservation and development may require
44 a filing fee in an amount as provided by the rules and regulations
45 promulgated by the department of housing preservation and development
46 pursuant to subdivision m of this section.

47 o. Any tax abatement granted for a period of nine years to a multiple
48 dwelling aided by a loan provided by the city of New York prior to Janu-
49 ary first, nineteen hundred seventy-one, shall upon application therefor
50 be adjusted to extend for a period of up to twenty years, provided that
51 the total abatement before and after such adjustment shall not exceed
52 the total abatement to which such property was initially entitled under
53 this section.

54 p. This section is enacted pursuant to the provisions of section four
55 hundred eighty-nine of the real property tax law and subdivision two of
56 section four hundred five of the private housing finance law.

1 q. No application for the benefits of this section shall be accepted
2 by the department of finance if there are outstanding real estate taxes
3 or water and sewer charges or payments in lieu of taxes which were due
4 and owing as of the last day of the tax period preceding the date of
5 such filing with the department of finance, provided that an applicant
6 aided by article eight or article fifteen of the private housing finance
7 law shall have such application accepted by the department of finance if
8 there are no outstanding real estate taxes or water and sewer charges
9 due and owing as of the last day of the tax period preceding commence-
10 ment of construction.

11 r. In the event that any building or structure receiving the benefits
12 of this section shall become operated exclusively for commercial, hotel
13 or transient hotel use, the tax commission shall withdraw benefits
14 granted herein prospectively.

15 s. The benefits of this section shall not apply to alterations or
16 improvements to existing dwellings in existence on December thirty-
17 first, nineteen hundred seventy-five where (i) such alterations or
18 improvements were completed on or before December thirty-first, nineteen
19 hundred seventy-five, and (ii) no dwelling units thereof on December
20 thirty-first, nineteen hundred seventy-five had rentals which were
21 subject to control by the city rent agency pursuant to chapter four of
22 title twenty-six of the code of the preceding municipality. This subdi-
23 vision shall not apply to alterations or improvements to any building or
24 structure which is benefitted by mortgage insurance pursuant to section
25 two hundred thirteen of the national housing act for applications filed
26 prior to January first, nineteen hundred seventy-nine.

27 t. Notwithstanding any law to the contrary, the owner of any building
28 or structure eligible for any of the benefits of this section which is
29 converted to a class A multiple dwelling, completed, or substantially
30 rehabilitated on or after January one, nineteen hundred seventy-four,
31 shall register the initial rent for each dwelling unit in such building
32 or structure with the New York state division of housing and community
33 renewal. After such registration, the rents of such dwelling units shall
34 be fully subject to regulations under chapter four of title twenty-six
35 of the code of the preceding municipality so long as the benefits of
36 this section are in effect or for such longer period as may be provided
37 by law.

38 u. Any tax exemption or tax abatement authorized pursuant to this
39 section may be revoked retroactively by the commissioner of department
40 of housing preservation and development or the department of finance at
41 any time during the authorized term of such tax exemption or tax abate-
42 ment if real estate taxes or water and sewer charges due to the city of
43 New York or city of Staten Island remain unpaid for one year after the
44 same are due and payable. In no event shall revocation be effective
45 prior to the date such taxes or charges were first due and payable.

46 v. Where alterations, improvements, or conversions include or benefit
47 that part of a building which is not occupied for dwelling purposes but
48 is occupied by stores or otherwise used for commercial purposes or
49 community facilities, the increase in assessed valuation and the cost of
50 the alteration shall be apportioned so that the benefits of this title
51 shall not be provided for alterations, improvements or conversions made
52 for other than dwelling purposes.

53 w. If any provision of this section or its application to any person
54 shall be held invalid, the remainder of this section and the applicabil-
55 ity of its provisions to other persons or circumstances shall not be
56 affected thereby.

1 x. Notwithstanding any provision of this section, no benefit pursuant
2 to paragraph four of subdivision b of this section shall be granted for
3 work commenced after January first, nineteen hundred eighty, unless the
4 applicant establishes that the department of housing preservation and
5 development and tenants of such class A multiple dwelling were given
6 notice of (i) the proposed work prior to commencement of such work, (ii)
7 the identity of the owner's representative, and (iii) the tenants'
8 rights under applicable law with respect to such work, provided that, in
9 the case of a loan program supervised by such department, notice to the
10 department shall be unnecessary, and further provided that the depart-
11 ment may itself provide the required notice to the tenants.

12 y. Applicants for benefits under the provisions of this section shall
13 file with the department of finance a form supplied by said department
14 which (i) states an intention to file for benefits under the provisions
15 of this section, (ii) describes the work for which tax benefits will be
16 claimed and (iii) estimates the cost of such work which will be eligible
17 for benefits. Such form shall be filed prior to the commencement of such
18 work. If the scope of such work or the estimated cost thereof changes
19 materially, applicant shall file a revised statement. Applicants who
20 fail to comply with the requirements of this subdivision shall be
21 subject to a penalty not to exceed one hundred percent of the filing fee
22 otherwise payable pursuant to subdivision n of this section.

23 z. A former tenant or former subtenant of premises in a non-residen-
24 tial building which is the subject of an application for an alteration
25 permit for conversion to a class A multiple dwelling, prior to the
26 application for any tax exemption or abatement benefits for such build-
27 ing pursuant to this section, and as a condition to the grant thereof,
28 shall be entitled to a relocation award under the terms and conditions
29 set forth below:

30 (1) As used in this subdivision, the term "eligible tenant" shall mean
31 any former tenant or former subtenant who:

32 (i) leased and used the vacated premises to conduct a manufacturing,
33 warehousing, or wholesaling business for not less than two consecutive
34 years immediately prior to vacating;

35 (ii) vacated such premises on or after April first, nineteen hundred
36 eighty-one for any reason other than eviction for non-payment of rent;

37 (iii) vacated such premises (a) no earlier than twenty-four months
38 prior to the filing date of an application for such alteration permit
39 and (b) no later than the completion of the conversion as evidenced by
40 the issuance of a permanent certificate of occupancy for a class A
41 multiple dwelling;

42 (iv) either purchased or leased for a term of not less than eighteen
43 months other premises within the city of Staten Island with a floor area
44 not less than one-third of the floor area of the vacated premises;

45 (v) relocated their business to such other premises within one year of
46 vacating the vacated premises; and

47 (vi) paid all commercial rent or occupancy tax for the vacated prem-
48 ises. A subtenant shall be eligible to receive a relocation award
49 notwithstanding any lack of eligibility of its prime tenant;

50 (2) the relocation award shall not exceed the greater of (i) the
51 aggregate base rent which accrued and was paid by the eligible tenant
52 during the final twenty-four months of its occupancy of the vacated
53 premises or (ii) four dollars for each square foot that the eligible
54 tenant occupied in the vacated premises during the final twenty-four
55 months of its occupancy of the vacated premises. As used in this subdi-
56 vision, base rent shall be calculated in the same manner as base rent is

1 calculated for purposes of commercial rent or occupancy tax in the city
2 of Staten Island. However, the aggregate award payable to a prime tenant
3 and/or any subtenants of such prime tenant shall not exceed the amount
4 which would have been payable to the prime tenant had the prime tenant
5 been eligible for an award based on the entire floor area it leased from
6 the owner; and if such limitation applies, the awards shall be prorated
7 based upon the total floor area used and occupied by each eligible
8 tenant;

9 (3) the relocation award shall become due and payable to an eligible
10 tenant at the time the eligible tenant (i) either purchases or leases
11 other premises in accordance with paragraph one of this subdivision, and
12 (ii) certifies eligibility to, and demands payment of, the award from
13 the owner of the vacated building. If the relocation award is not paid
14 within thirty days of such certification and demand, interest shall
15 accrue on the relocation award from the date of the certification and
16 demand at the rate of twenty-four percent per annum;

17 (4) at any time after such certification and demand and prior to the
18 date of the filing of an application for tax exemption or abatement for
19 the vacated building pursuant to this section, an eligible tenant who
20 has not received a relocation award shall have a right to file a notice
21 of claim. Such notice of claim shall be filed with the county clerk of
22 the county and shall verify the claimant's name, its compliance with
23 eligibility requirements, the address of the vacated premises, the floor
24 area it occupied, the name of the prime tenant if the claimant is a
25 subtenant, and all the base rent that accrued and was paid by the claim-
26 ant during the final twenty-four months of its occupancy;

27 (5) a notice of claim, filed in accordance with paragraph four of this
28 subdivision, may be discharged by the filing of an undertaking with the
29 county clerk in an amount equal to the amount claimed and in accordance
30 with the procedures set forth in subdivision four of section nineteen of
31 the lien law, or by the payment into court of such amount in accordance
32 with the procedures set forth in section fifty-five of such law;

33 (6) no tax exemption or abatement shall be granted pursuant to this
34 section unless the department of housing preservation and development
35 receives an affidavit from the applicant for benefits of this section
36 which verifies that:

37 (i) the applicant has caused to be published a notice in a newspaper
38 of general circulation within the city of Staten Island, no later than
39 sixty days prior to filing of an application for tax exemption or abate-
40 ment pursuant to this section, which advises former tenants and subten-
41 ants of their rights pursuant to this subdivision; and

42 (ii) no notice of claim has been filed or all claims have been
43 released by the claimants, or secured in accordance with the provisions
44 of paragraph five of this subdivision, or discharged as an improper
45 claim by court order;

46 (7) the affidavit required pursuant to the provisions of paragraph six
47 of this subdivision shall be considered part of the application for
48 benefits pursuant to this section;

49 (8) if an eligible tenant has duly filed a notice of claim pursuant to
50 paragraph four of this subdivision and did not receive a relocation
51 award as provided herein, it may commence an action against any appli-
52 cant who filed a false affidavit pursuant to paragraph six of this
53 subdivision or any security posted by such applicant pursuant to para-
54 graph five of this subdivision, within three years of such filing. In
55 any action to enforce a claim pursuant to this subdivision, if the court
56 finds that the claimant has wilfully exaggerated the amount of the

1 claim, the claimant may be held liable in damages for an amount not to
2 exceed the proper relocation award. An eligible tenant in whose favor a
3 judgment is entered shall be entitled to costs and reasonable legal fees
4 and disbursements provided that such judgment is in excess of the amount
5 which the applicant or owner offered to pay the eligible tenant; and

6 (9) any lease or other rental agreement provision exempting, waiving,
7 releasing or discharging the obligation to pay a relocation award pursu-
8 ant to this subdivision shall be void as against public policy and whol-
9 ly unenforceable.

10 aa. Harassment. (1) The provisions of this subdivision apply to and
11 are additional requirements for claiming or receiving:

12 (a) any tax exemption under this section; or

13 (b) any tax abatement under this section where the certified reason-
14 able cost per dwelling unit of the conversion, alteration or improvement
15 (including the cost of any conversion, alteration or improvement for
16 which an abatement was approved within four years prior to commencement
17 of the conversion, alteration or improvement) exceeds seven thousand
18 five hundred dollars.

19 (2) The owner of the property shall file with the department of hous-
20 ing preservation and development, not less than thirty days before the
21 commencement of the conversion, alteration or improvement (hereinafter
22 referred to as the "cut-off date"), an affidavit, or, where any informa-
23 tion referred to in paragraph one of this subdivision changes prior to
24 applying for or claiming any benefit under this section, an amending
25 affidavit, setting forth the following information:

26 (a) every owner of record and owner of a substantial interest in the
27 property or entity owning the property or sponsoring the conversion,
28 alteration or improvement;

29 (b) a statement that none of such persons had, within the five years
30 prior to the cut-off date, been found to have harassed or unlawfully
31 evicted tenants by judgment or determination of a court or agency
32 (including a non-governmental agency having appropriate legal jurisdic-
33 tion) under the penal law, any state or local law regulating rents or
34 any state or local law relating to harassment of tenants or unlawful
35 eviction; and

36 (c) any change in the information required to be set forth.

37 (3) No conversion, alteration or improvement subject to this subdivi-
38 sion shall be eligible for tax exemption or tax abatement under this
39 section where:

40 (a) any affidavit required under this subdivision has not been filed;

41 (b) any such affidavit contains a willful misrepresentation or omis-
42 sion of any material fact; or

43 (c) any person referred to in subparagraph (a) of paragraph two of
44 this subdivision has been found to have harassed or unlawfully evicted
45 tenants as described in that paragraph, until and unless the finding is
46 reversed on appeal, provided that any such finding after the cut-off
47 date shall not apply to or affect any tax abatement or exemption for the
48 conversion, alteration or improvement covered by the affidavit.

49 (4) The department of housing preservation and development and the
50 department of finance shall maintain a list of affidavits as described
51 in paragraph two of this subdivision. Each agency shall review that list
52 with respect to each application or claim for benefits subject to this
53 subdivision.

54 (5) "Substantial interest" as used in subparagraph (a) of paragraph
55 two of this subdivision shall mean ownership of an interest of ten per

1 centum or more in the property or entity owning the property or sponsor-
2 ing the conversion, alteration or improvement.

3 (6) Where the conversion, alteration or improvement is commenced
4 before August first, nineteen hundred eighty-three, the cut-off date
5 shall be as set forth in this subdivision, but no affidavit shall be
6 required to be filed until thirty days after the effective date of this
7 subdivision.

8 bb. Notwithstanding any contrary provision of the private housing
9 finance law, the benefits of this section shall apply to any limited
10 profit housing company as provided in this section. Such multiple dwell-
11 ing, building or structure shall be eligible for benefits where at least
12 one building-wide improvement or alteration is part of the application
13 for benefits. Furthermore, to the extent that such alterations or
14 improvements are financed with grants, loans or subsidies from any
15 federal, state, or local agency or instrumentality, such multiple dwell-
16 ing, building or structure shall be eligible for benefits only if the
17 limited profit housing company has entered into a binding and irrev-
18 ocable agreement with the commissioner of housing of the state of New
19 York, the supervising agency, as such term is defined in section two of
20 the private housing finance law, the New York city housing development
21 corporation, or the New York state housing finance agency prohibiting
22 the dissolution or reconstitution of such limited profit housing company
23 pursuant to section thirty-five of the private housing finance law for
24 not less than fifteen years from the commencement of benefits. The
25 abatement of taxes on such property, including the land, shall not be an
26 amount greater than ninety per centum of the certified reasonable cost
27 of such alterations or improvements, as determined under regulations of
28 the department of housing preservation and development, nor greater than
29 eight and one-third percent of such certified reasonable cost in any
30 twelve-month period, nor be effective for more than twenty years. The
31 annual abatement of taxes in any twelve-month period shall in no event
32 exceed fifty percent of the amount of taxes payable in such twelve-month
33 period pursuant to the applicable exemption granted pursuant to article
34 two of the private housing finance law or other applicable laws or fifty
35 percent of payments required to be made in lieu of taxes in such twelve-
36 month period. Provided, however, the annual abatement of taxes for
37 alterations or improvements commenced prior to June first, nineteen
38 hundred eighty-six may not be applied to reduce the amount of taxes
39 payable or the amount of payments required to be made in lieu of taxes
40 in any twelve-month period to an amount less than the minimum amount of
41 taxes required to be paid pursuant to section thirty-three of the
42 private housing finance law.

43 cc. The commissioner of the department of housing preservation and
44 development and the commissioner of the department of finance shall
45 prepare an annual report which shall be submitted to the Mayor and the
46 council on or before the first of July next succeeding the year to which
47 the report pertains, regarding the exemptions and abatements granted
48 pursuant to this section and shall include, but not be limited to the
49 following information: (i) the amount of real property tax that would
50 have been paid in the aggregate by the owners of real property granted
51 an exemption or abatement if the property were fully taxable and the
52 amount of tax actually paid in the aggregate by such owners, (ii) the
53 geographic distribution of exemptions and abatements granted pursuant to
54 this section, and (iii) a distribution by type of eligible categories as
55 delineated in paragraphs one through nine of subdivision b of this
56 section.

1 dd. Partial waiver of rent adjustments attributable to major capital
2 improvements. (1) The provisions of this subdivision apply to and are
3 additional requirements for claiming or receiving any tax abatement
4 under this section, except as provided in paragraphs three and four of
5 this subdivision.

6 (2) The owner of the property shall file with the department of hous-
7 ing preservation and development, on the date any application for bene-
8 fits is made, a declaration stating that in consideration of any tax
9 abatement benefits which may be received pursuant to such application
10 for alterations or improvements constituting a major capital improve-
11 ment, such owner agrees to waive the collection of a portion of the
12 total annual amount of any rent adjustment attributable to such major
13 capital improvement which may be granted by the New York state division
14 of housing and community renewal pursuant to the rent stabilization code
15 or its successor statute for the city of Staten Island equal to one-half
16 of the total annual amount of the tax abatement benefits which the prop-
17 erty receives pursuant to such application with respect to such alter-
18 ations or improvements. Such waiver shall commence on the date of the
19 first collection of such rent adjustment, provided that, in the event
20 that such tax abatement benefits were received prior to such first
21 collection, the amount waived shall be increased to account for such tax
22 abatement benefits so received. Following the expiration of a tax abate-
23 ment for alterations or improvements constituting a major capital
24 improvement for which a rent adjustment has been granted by such divi-
25 sion, the owner may collect the full amount of annual rent permitted
26 pursuant to such rent adjustment. A copy of such declaration shall be
27 filed simultaneously with the New York state division of housing and
28 community renewal. Such declaration shall be binding upon such owner,
29 and his or her successors and assigns.

30 (3) The provisions of this subdivision shall not apply to substantial
31 rehabilitation of buildings vacant when alterations or improvements are
32 commenced or to buildings rehabilitated with the substantial assistance
33 of city, state or federal subsidies.

34 (4) The provisions of this subdivision shall apply only to alterations
35 and improvements commenced after the effective date of such subdivision.

36 § 11-244 Tax exemption and abatement for rehabilitated buildings. a.
37 As used in this section, the following terms shall have the following
38 meanings:

39 1. "Eligible real property" shall mean:

40 (i) any class B multiple dwelling;

41 (ii) any class A multiple dwelling used for single room occupancy
42 pursuant to section two hundred forty-eight of the multiple dwelling law
43 which contains no more than twenty-five percent class A dwelling units
44 which contain lawful sanitary and kitchen facilities within the dwelling
45 unit, provided that in the case of a multiple dwelling containing ten
46 dwelling units or less, up to forty percent of the dwelling units may be
47 class A units; and

48 (iii) not-for-profit institutions with sleeping accommodations.

49 Notwithstanding the foregoing, eligible real property shall not
50 include college and school dormitories, club houses, or residences whose
51 occupancy is restricted to an institutional use such as housing intended
52 for use primarily or exclusively by the employees of a single company or
53 institution. A building is an eligible real property only if it quali-
54 fies as such after completion of the eligible improvements, but need not
55 have been an eligible real property prior to the eligible improvements.

1 2. "Eligible improvements" shall be limited to the following categories of work, provided further that such work shall be in conformity
2 with all applicable laws:

3 (i) replacement of a boiler or burner or installation of an entire new
4 heating system;

5 (ii) replacement or upgrading of electrical system;

6 (iii) replacement or upgrading of elevators;

7 (iv) installation or replacement or upgrading of the plumbing system,
8 including water main and risers;

9 (v) replacement or installation of walls, ceilings, floors or trim
10 where necessary;

11 (vi) replacement or upgrading of doors, installation of security
12 devices and systems;

13 (vii) installation, replacement or upgrading of smoke detectors, fire
14 alarms, fire escapes or sprinkler systems;

15 (viii) replacement or repair of roof, leaders and gutters;

16 (ix) replacement or installation of bathroom facilities;

17 (x) installation of wall and pipe insulation;

18 (xi) replacement or upgrading of street connections for water or sewer
19 services;

20 (xii) replacement or installation of windows, or installation of
21 window gates or guards;

22 (xiii) installation or replacement of boiler smoke stack;

23 (xiv) pointing, waterproofing and cleaning of entire building exterior
24 surface;

25 (xv) improvements designed to conserve the use of fuel, electricity or
26 other energy sources;

27 (xvi) work necessary to effect compliance with all applicable laws
28 including, but not limited to the multiple dwelling law, the city hous-
29 ing maintenance code or its successor statute for the city of Staten
30 Island and the building code; and

31 (xvii) improvements unique to congregate living facilities, as defined
32 by rules and regulations promulgated by the department of housing pres-
33 ervation and development.

34 3. "Existing dwelling" shall mean any eligible real property in exist-
35 ence prior to the commencement of eligible improvements, for which tax
36 exemption and abatement is claimed under the terms of this section and
37 for which a valuation appears on the annual record of assessed valuation
38 of the city for the fiscal year immediately preceding the commencement
39 of construction of such eligible improvements.

40 4. "Commencement of eligible improvement" shall mean the beginning of
41 any physical operation undertaken for the purpose of making eligible
42 improvements to eligible real property.

43 5. "Completion of eligible improvement" shall mean the conclusion or
44 termination of any physical operation referred to in the preceding para-
45 graph, to an extent or degree which renders an eligible property capable
46 of use for the purpose for which the improvements were intended.

47 6. "Permanent resident" shall mean a person who has resided in eligi-
48 ble real property for six months or more; has a lease or other rental
49 agreement for a term of six or more months; or has requested a lease
50 pursuant to the provisions of the rent stabilization code or its succes-
51 sor statute for the city of Staten Island for housing accommodations
52 located in hotels.

53 b. Any increase in the assessed valuation of eligible real property
54 shall be exempt from taxation for local purposes for a period of thir-
55

1 ty-two years to the extent such increase results from eligible improve-
2 ments, provided that:

3 (i) the eligible improvements are commenced after July first, nineteen
4 hundred eighty, and prior to the thirty-first of December in the year
5 next succeeding the effective date of this section, and are completed
6 within thirty-six months from commencement;

7 (ii) the department of housing preservation and development determines
8 and certifies the cost, qualification and eligibility of any improvement
9 for benefits of this section;

10 (iii) the exemption may commence no sooner than the July first follow-
11 ing the filing with the department of finance of a certification of
12 eligibility issued by the department of housing preservation and devel-
13 opment for benefits of this section; provided, however, that if the
14 rehabilitation is carried out with substantial government assistance as
15 part of a program for affordable housing the exemption may commence no
16 sooner than the July first following the commencement of construction of
17 eligible improvements;

18 (iv) immediately prior to, and during, the construction of eligible
19 improvements, not less than fifty percent of the dwelling units in such
20 eligible real property are occupied by permanent residents; provided
21 that such occupancy requirement shall not apply to a vacant, govern-
22 mentally owned multiple dwelling which had been vacant for not less than
23 two years prior to the commencement of construction of eligible improve-
24 ments, nor to a vacant multiple dwelling where the eligible improvements
25 are carried out with the substantial assistance of grants, loans or
26 subsidies from any federal, state or local agency or instrumentality or
27 any not-for-profit philanthropic organization one of whose primary
28 purposes is providing low or moderate income housing;

29 (v) no outstanding real estate taxes, water and sewer charges,
30 payments in lieu of taxes or other municipal charges are due and owing
31 as of the tax quarter immediately preceding the commencement of tax
32 exemption pursuant to this section; provided that an applicant aided
33 pursuant to the provisions of the private housing finance law shall have
34 such application accepted by the tax commission if there are no
35 outstanding real estate, water and sewer taxes due and owing as of the
36 last day of the tax quarter preceding commencement of construction of
37 eligible improvements;

38 (vi) except in the case of eligible real property which is receiving
39 or has received assistance pursuant to a governmental rent subsidy
40 program or which is owned by a not-for-profit corporation or by a wholly
41 owned subsidiary of a not-for-profit corporation and which is receiving
42 or has received assistance pursuant to a governmental loan subsidy
43 program, as defined by the rules and regulations promulgated by the
44 department of housing preservation and development, for the construction
45 of eligible improvements, the initial rent after completion of eligible
46 improvements, for ninety percent of the total number of dwelling units
47 occupied by permanent residents in a class A or class B multiple dwell-
48 ing other than apartments shall not exceed the greater of either the
49 amount of any governmental rental assistance received by an occupant or
50 seventy-five percent of the rent which is permitted to be charged for
51 zero-bedroom units on the moderate rehabilitation fair market rent sche-
52 dule as determined by the United States department of housing and urban
53 development for the housing assistance payments program under section
54 eight of the national housing act;

55 (vii) no person residing in eligible real property prior to or during
56 the construction of eligible improvements shall be required by the owner

1 to vacate the eligible real property solely in order to perform the
2 eligible improvements or any related work.

3 c. Eligible real property which qualifies for exemption from taxation
4 for local purposes for eligible improvements shall also be eligible for
5 an annual abatement of real property taxes in an amount not to exceed
6 twelve and one-half percent of the reasonable cost of eligible improve-
7 ments certified by the department of housing preservation and develop-
8 ment, which abatement may commence on the first day of the first tax
9 quarter following the filing with the department of finance of a certifi-
10 cation of eligibility issued by the department of housing preservation
11 and development for benefits of this section; provided, however, that if
12 the rehabilitation is carried out with substantial government assistance
13 as part of a program for affordable housing the abatement may commence
14 no sooner than the first day of the first tax quarter following the
15 commencement of construction of eligible improvements, provided further
16 that:

17 (i) the annual abatement shall not exceed the amount of taxes other-
18 wise payable in the corresponding year;

19 (ii) the period during which such abatement is effective shall not
20 exceed twenty consecutive years from the date such abatement first
21 becomes effective; and

22 (iii) the total abatement shall not exceed the lesser of one hundred
23 fifty percent of the certified reasonable costs of eligible improvements
24 or the actual costs as determined by the department of housing preserva-
25 tion and development pursuant to its rules and regulations.

26 d. During the period of tax exemption or abatement pursuant to this
27 section, each of the following shall be a condition precedent to the
28 continuation of the exemption and/or abatement:

29 (i) compliance with all applicable provisions of law, including, but
30 not limited to the multiple dwelling law, the building code and the
31 housing maintenance code of the preceding municipality;

32 (ii) all dwelling units, except owner occupied units, shall be subject
33 to the emergency housing rent control law or the local housing rent
34 control act or the tenant protection act of nineteen hundred seventy-
35 four, or any local laws enacted pursuant thereto or the rent stabiliza-
36 tion law of nineteen hundred sixty-nine or their successor statutes for
37 the city of Staten Island; provided, however, that the department of
38 housing preservation and development may exempt from this requirement
39 dwelling units that are not occupied by permanent residents in those
40 buildings owned by a not-for-profit corporation and which are improved
41 with the aid of a rehabilitation loan from any government agency or
42 instrumentality or operated pursuant to a contract with a governmental
43 entity.

44 (iii) eligible real property receiving tax exemption or tax abatement
45 benefits under this section shall not receive tax exemption or tax
46 abatement for new construction or rehabilitation under any other
47 provision of law;

48 (iv) the eligible improvements shall not be used as the basis for any
49 application for rent increases and the owner shall file a statement to
50 such effect with the department of housing preservation and development
51 and with any appropriate rent regulatory agency, provided, however, that
52 rents of units improved with the aid of a rehabilitation loan from any
53 governmental agency or instrumentality may within the limitations estab-
54 lished by this section be increased pursuant to the rules and regu-
55 lations of the department of housing preservation and development; and

1 (v) a minimum of seventy-five percent of the dwelling units shall be
2 rental units occupied by permanent residents; provided, however that the
3 department of housing preservation and development may exempt from this
4 requirement those buildings improved with the aid of a rehabilitation
5 loan from any governmental agency or instrumentality or operated pursu-
6 ant to a contract with a governmental entity.

7 e. During the period of tax exemption or abatement pursuant to this
8 section, the owner shall submit an annual certification to the depart-
9 ment of housing preservation and development in the form prescribed by
10 such department. Failure to submit such certification in any given year
11 may result in the revocation of benefits. The certification shall
12 include the following:

13 (i) the total number of dwelling units within the eligible real prop-
14 erty and the total number of dwelling units occupied by permanent resi-
15 dents;

16 (ii) the number of dwelling units subject to the provisions of the
17 emergency housing rent control act, the emergency tenant protection act
18 of nineteen seventy-four or any local laws enacted pursuant thereto; the
19 emergency housing rent control law or the rent stabilization law of
20 nineteen hundred sixty-nine or their successor statutes applicable to
21 the city of Staten Island; and

22 (iii) all such other information required by the department of housing
23 preservation and development.

24 f. Any tax exemption or tax abatement authorized pursuant to this
25 section may be revoked or reduced by the department of housing preserva-
26 tion and development or by the department of finance at any time during
27 the authorized term of such tax exemption or tax abatement upon a find-
28 ing by either department that:

29 (i) the application for benefits pursuant to this section or the annu-
30 al certification required hereunder contains a false statement or false
31 information as to a material matter, or omits a material matter, in
32 which case the revocation or reduction may be retroactive to the
33 commencement of benefits pursuant to this section;

34 (ii) real estate taxes, water, sewer or other municipal charges, or
35 payments in lieu of said taxes or charges are, and have remained, due
36 and owing for more than one year, in which case the revocation or
37 reduction may be retroactive to the commencement of benefits pursuant to
38 this section, provided that in no event shall revocation be effective
39 prior to the date such taxes or charges were first due and payable; or

40 (iii) the eligible real property fails to comply with one or more of
41 the provisions or requirements of this section.

42 g. Application forms for the benefits of this section shall be filed
43 with the tax commission within the time periods to be established by
44 rules and regulations promulgated by the department of housing preserva-
45 tion and development, pursuant to subdivision i of this section. The tax
46 commission shall certify to the department of finance the amount of
47 taxes to be abated, pursuant to the certification of the department of
48 housing preservation and development as herein provided. No such appli-
49 cation shall be accepted unless accompanied by a copy of the certificate
50 of the department of housing preservation and development both as to
51 reasonable cost and as to eligibility as provided in subdivision b of
52 this section.

53 h. No owner of a dwelling to which the benefits of this section apply,
54 nor any agent, employee, manager or officer of such owner shall directly
55 or indirectly deny to any person because of race, color, creed, national
56 origin, sex, disability, marital status, age, religion, military status,

1 gender identity or expression or sexual orientation any of the dwelling
2 accommodations in such property or any of the privileges or services
3 incident to occupancy therein. The term "disability" as used in this
4 subdivision shall mean a physical, mental or medical impairment result-
5 ing from anatomical, physiological, or neurological conditions which
6 prevents the exercise of a normal bodily function or is demonstrable by
7 medically accepted clinical or laboratory diagnostic techniques. Nothing
8 in this subdivision shall restrict such consideration in the availabili-
9 ty of housing accommodations for the purpose of providing for the
10 special needs of a particular group.

11 i. The department of housing preservation and development shall deter-
12 mine and certify the reasonable cost of any such conversions, alter-
13 ations or improvements and eligibility for the benefits of this section
14 and for that purpose may adopt rules and regulations, administer oaths
15 to and take the testimony of any person, including, but not limited to
16 the owner of such property, may issue subpoenas requiring the attendance
17 of such persons and the production of such bills, books, papers or other
18 documents as it shall deem necessary, may make preliminary estimates of
19 the maximum reasonable cost of such conversions, alterations or improve-
20 ments, may establish maximum allowable costs of specified units,
21 fixtures or work in such conversions, alterations or improvements, and
22 may require the submission of plans and specifications of such conver-
23 sions, alterations or improvements before the start thereof. Applica-
24 tions for certification shall include all bills and other documents
25 showing the cost of construction or such other evidence of such cost as
26 shall be satisfactory to the department of housing preservation and
27 development, including, without limitation, certification of cost by a
28 certified public accountant in accordance with generally accepted
29 accounting principles. Each additional agency to which functions are
30 assigned by this section may adopt and promulgate rules and regulations
31 for the effectuation of the purposes of this section.

32 j. The department of housing preservation and development may require
33 a filing fee in an amount as provided by the rules and regulations
34 promulgated by the department of housing preservation and development
35 pursuant to subdivision i of this section.

36 k. Any person who shall knowingly and wilfully make any false state-
37 ments as to any material matter in any application for the benefits of
38 this section shall be guilty of an offense punishable by a fine of not
39 more than five hundred dollars or imprisonment for not more than ninety
40 days, or both.

41 l. If any provision of this section or its application to any person
42 shall be held invalid, the remainder of this section and the applicabil-
43 ity of its provisions to other persons or circumstances shall not be
44 affected thereby.

45 § 11-245.1 Site eligibility limitations on benefits pursuant to
46 section four hundred twenty-one-a of the real property tax law.

47 (a) Where eligibility for benefits under section four hundred twenty-
48 one-a of the real property tax law is sought for any construction
49 commenced on or after November twenty-ninth, nineteen hundred eighty-
50 five and before May twelfth, two thousand on the basis that such
51 construction shall take place on land which, on the date thirty-six
52 months prior to the commencement of such construction, was improved with
53 a nonresidential building or buildings and was under-utilized, the
54 under-utilization of the land must have been such that each building or
55 buildings:

1 (1) contained no more than the permissible floor area ratio for
2 nonresidential buildings in the zoning district in question and a
3 floor area ratio which was twenty percent or less of the maximum
4 floor area ratio for residential buildings,

5 (2) had an assessed valuation equal to or less than twenty percent
6 of the assessed valuation of the land on which the building or
7 buildings were situated, or

8 (3) by reason of the configuration of the building, or substantial
9 structural defects not brought about by deferred maintenance prac-
10 tices or intentional conduct, could no longer be functionally or
11 economically utilized in the capacity in which it was formerly
12 utilized.

13 For purposes of this subdivision and subdivisions (a-1) through (a-4)
14 of this section, construction shall be deemed to have commenced on the
15 date immediately following the issuance by the department of buildings
16 of a new building permit for an entire new building (based upon archi-
17 tectural, plumbing and structural plans approved by such department) on
18 which the excavation and the construction of initial footings and foun-
19 dations commences in good faith, on vacant land and for the entire
20 project site, as certified by an architect or professional engineer
21 licensed in the state, provided that installation of footings and foun-
22 dations is similarly certified by such architect or engineer to have
23 been completed without undue delay.

24 (a-1) Except as provided in subdivision (a-2) of this section, where
25 eligibility for benefits under section four hundred twenty-one-a of the
26 real property tax law is sought for any construction commenced on or
27 after May twelfth, two thousand and before the effective date of subdivi-
28 sions (a-3) and (a-4) of this section on the basis that such
29 construction shall take place on land which, on the date thirty-six
30 months prior to the commencement of such construction, was improved with
31 a nonresidential building or buildings and was under-utilized, the
32 under-utilization of the land must have been such that each building or
33 buildings:

34 (1) contained no more than the permissible floor area ratio for
35 nonresidential buildings in the zoning district in question and a
36 floor area ratio which was seventy-five percent or less of the maxi-
37 mum floor area ratio for residential buildings,

38 (2) had an assessed valuation equal to or less than seventy-five
39 percent of the assessed valuation of the land on which the building
40 or buildings were situated, or

41 (3) by reason of the configuration of the building, or substantial
42 structural defects not brought about by deferred maintenance prac-
43 tices or intentional conduct, could no longer be functionally or
44 economically utilized in the capacity in which it was formerly
45 utilized.

46 For purposes of this subdivision, construction shall be deemed to have
47 commenced as provided in subdivision (a) of this section.

48 (a-2) Where eligibility for benefits under section four hundred twen-
49 ty-one-a of the real property tax law is sought for any construction on
50 any tax lot now existing or hereafter created which is located south of
51 or adjacent to either side of one hundred tenth street in the borough of
52 Manhattan which construction commenced on or after May twelfth, two
53 thousand and before the effective date of subdivisions (a-3) and (a-4)
54 of this section on the basis that such construction shall take place on
55 land which, on the date thirty-six months prior to the commencement of
56 such construction, was improved with a nonresidential building or build-

1 ings and was under-utilized, the under-utilization of the land must have
2 been such that each building or buildings:

3 (1) contained no more than the permissible floor area ratio for
4 nonresidential buildings in the zoning district in question and a
5 floor area ratio which was fifty percent or less of the maximum
6 floor area ratio for residential buildings,

7 (2) had an assessed valuation equal to or less than fifty percent of
8 the assessed valuation of the land on which the building or build-
9 ings were situated, or

10 (3) by reason of the configuration of the building, or substantial
11 structural defects not brought about by deferred maintenance prac-
12 tices or intentional conduct, could no longer be functionally or
13 economically utilized in the capacity in which it was formerly
14 utilized.

15 For purposes of this subdivision, construction shall be deemed to have
16 commenced as provided in subdivision (a) of this section.

17 (a-3) Except as provided in subdivision (a-4) of this section, where
18 eligibility for benefits under section four hundred twenty-one-a of the
19 real property tax law is sought for any construction commenced on or
20 after the effective date of this subdivision on the basis that such
21 construction shall take place on land which, on the date thirty-six
22 months prior to the commencement of such construction, was improved with
23 a nonresidential building or buildings and was under-utilized, the
24 under-utilization of the land must have been such that each building or
25 buildings:

26 (1) contained no more than the permissible floor area ratio for
27 nonresidential buildings in the zoning district in question and
28 either (i) had a floor area ratio which was seventy-five percent or
29 less of the maximum floor area ratio for residential buildings in
30 such zoning district, or (ii) if the land was not zoned to permit
31 residential use on the date thirty-six months prior to the commence-
32 ment of construction, had a floor area ratio which was seventy-five
33 percent or less of the floor area ratio of the residential building
34 which replaces such non-residential building,

35 (2) had an assessed valuation equal to or less than seventy-five
36 percent of the assessed valuation of the land on which the building
37 or buildings were situated, or

38 (3) by reason of the configuration of the building, or substantial
39 structural defects not brought about by deferred maintenance prac-
40 tices or intentional conduct, could no longer be functionally or
41 economically utilized in the capacity in which it was formerly
42 utilized.

43 For purposes of this subdivision, construction shall be deemed to have
44 commenced as provided in subdivision (a) of this section.

45 (a-4) Where eligibility for benefits under section four hundred twen-
46 ty-one-a of the real property tax law is sought for any construction on
47 any tax lot now existing or hereafter created which is located south of
48 or adjacent to either side of one hundred tenth street in the borough of
49 Manhattan which construction commenced on or after the effective date of
50 this subdivision on the basis that such construction shall take place on
51 land which, on the date thirty-six months prior to the commencement of
52 such construction, was improved with a nonresidential building or build-
53 ings and was under-utilized, the under-utilization of the land must have
54 been such that each building or buildings:

55 (1) contained no more than the permissible floor area ratio for
56 nonresidential buildings in the zoning district in question and

1 either (i) had a floor area ratio which was fifty percent or less of
2 the maximum floor area ratio for residential buildings in such
3 zoning district, or (ii) if the land was not zoned to permit resi-
4 dential use on the date thirty-six months prior to the commencement
5 of construction, had a floor area ratio which was fifty percent or
6 less of the floor area ratio of the residential building which
7 replaces such non-residential building,

8 (2) had an assessed valuation equal to or less than fifty percent of
9 the assessed valuation of the land on which the building or build-
10 ings were situated, or

11 (3) by reason of the configuration of the building, or substantial
12 structural defects not brought about by deferred maintenance prac-
13 tices or intentional conduct, could no longer be functionally or
14 economically utilized in the capacity in which it was formerly
15 utilized.

16 For purposes of this subdivision, construction shall be deemed to have
17 commenced as provided in subdivision (a) of this section.

18 (b) The department of housing preservation and development may promul-
19 gate rules and regulations for the effectuation of the purposes of this
20 section.

21 (c) The limitations on benefits contained in this section shall be in
22 addition to those contained in any other law or regulation.

23 § 11-245.1-a Boundary review commission. (a) There shall be estab-
24 lished a boundary review commission consisting of eleven members,
25 including the commissioner of finance, the commissioner of housing pres-
26 ervation and development, the commissioner of buildings, the chairperson
27 of the department of city planning, the director of the office of
28 management and budget, the executive director of the board of standards
29 and appeals and five members chosen by the speaker of the council. The
30 appointees of the speaker of the council shall serve at the pleasure of
31 the speaker. The commission shall elect a chairperson from among its
32 members.

33 (b) The boundary review commission shall undertake a biennial review
34 of the tax benefit program established pursuant to section four hundred
35 twenty-one-a of the real property tax law to determine whether the areas
36 for which the tax benefits are restricted pursuant to those provisions
37 of the administrative code which relate to such program should be
38 revised in any manner.

39 (c) In conducting a review to determine whether geographic exclusion
40 zones restricting benefits provided pursuant to section four hundred
41 twenty-one-a of the real property tax law should be revised, the commis-
42 sion shall review measurers of housing activity and housing market
43 conditions throughout the city including (i) the amount of new develop-
44 ment; (ii) values in land sales, residential sales prices and rents;
45 (iii) trends in land sales, residential sales prices and rents and other
46 development trend data including land use trends, lot consolidation and
47 board of standards and appeals actions; (iv) development potential; (v)
48 relationship between volume of potential development and existing hous-
49 ing; and (vi) financial feasibility of development with and without the
50 benefits provided pursuant to section four hundred twenty-one-a of the
51 real property tax law.

52 (d) On or before December first of each even numbered year following
53 the effective date of this section, such commission shall submit a
54 report to the speaker of the council and the mayor on its deliberations
55 and shall include recommendations for revisions to such boundaries that
56 it deems appropriate or why no revisions were recommended, including the

1 methodology by which it applied the criteria in subdivision (c) of this
2 section to arrive at its recommendations, and all data used to make such
3 recommendations. Any recommendations shall be consistent with the
4 provisions of section four hundred twenty-one-a of the real property tax
5 law.

6 § 11-245.1-b Limitations on benefits pursuant to section four hundred
7 twenty-one-a of the real property tax law. (a) As used in this section,
8 the following terms shall have the following meanings:

9 (1) "Residential tax lot" shall mean a tax lot that contains dwelling
10 units.

11 (2) "Non-residential tax lot" shall mean a tax lot that does not
12 contain any dwelling units.

13 (3) "Annual limit" shall mean sixty-five thousand dollars, which
14 amount shall be increased by three percent, compounded annually, on each
15 taxable status date following the first anniversary of the effective
16 date of the local law that added this section.

17 (4) "Certificate of occupancy" shall mean the first certificate of
18 occupancy covering all residential areas of the building on or contain-
19 ing a tax lot.

20 (5) "Unit count" shall mean (i) in the case of a residential tax lot
21 that does not contain any commercial, community facility or accessory
22 use space, the number of dwelling units in such tax lot, and (ii) in the
23 case of a residential tax lot that contains commercial, community facil-
24 ity or accessory use space, the number of dwelling units in such tax lot
25 plus one.

26 (6) "Exemption cap" shall mean the unit count multiplied by the annual
27 limit.

28 (b) The provisions of this section shall apply only to projects that
29 commence construction on or after the effective date of this section.

30 (c) No benefits under section four hundred twenty-one-a of the real
31 property tax law shall be conferred for any multiple dwelling containing
32 fewer than four dwelling units, as set forth in the certificate of occu-
33 pancy, unless the construction of such multiple dwelling is carried out
34 with substantial assistance of grants, loans or subsidies from any
35 federal, state or local agency or instrumentality where such assistance
36 is provided pursuant to a program for the development of affordable
37 housing.

38 (d) The portion of the assessed valuation of any residential tax lot
39 exempted from real property taxation in any year pursuant to section
40 four hundred twenty-one-a of the real property tax law shall not exceed
41 the exemption cap on or after the first taxable status date after the
42 building on or containing such tax lot receives its certificate of occu-
43 pancy unless, in accordance with a regulatory agreement with or approved
44 by the department of housing preservation and development that is appli-
45 cable to such tax lot, (1) the construction of such building is carried
46 out with substantial assistance of grants, loans or subsidies from any
47 federal, state or local agency or instrumentality and such assistance is
48 provided pursuant to a program for the development of affordable hous-
49 ing, or (2) the department of housing preservation and development has
50 imposed a requirement or has certified that twenty per cent of the units
51 be restricted income units. All such restricted income units must be
52 situated onsite. For the purposes of this section, "onsite" shall mean
53 that restricted income units shall be situated within the building or
54 buildings for which benefits pursuant to section four hundred twenty-
55 one-a of the real property tax law are being granted. A dwelling unit
56 that is located in two or more tax lots shall be ineligible to receive

1 any benefits under section four hundred twenty-one-a of the real proper-
2 ty tax law. The portion of the assessed valuation of all non-residential
3 tax lots in the building on or containing such non-residential tax lots
4 exempted from real property taxation in any year pursuant to section
5 four hundred twenty-one-a of the real property tax law shall not exceed
6 a cumulative total equal to the annual limit on or after the first taxa-
7 ble status date after the building on or containing such non-residential
8 tax lots receives its certificate of occupancy.

9 (e) A new multiple dwelling that is situated in (1) a neighborhood
10 preservation program area as determined by the department of housing
11 preservation and development as of June first, nineteen hundred eighty-
12 five, (2) a neighborhood preservation area as determined by the New York
13 city planning commission as of June first, nineteen hundred eighty-five,
14 (3) an area that was eligible for mortgage insurance provided by the
15 rehabilitation mortgage insurance corporation as of May first, nineteen
16 hundred ninety-two, or (4) an area receiving funding for a neighborhood
17 preservation project pursuant to the neighborhood reinvestment corpo-
18 ration act (42 U.S.C. §§ 8101 et seq.) as of June first, nineteen
19 hundred eighty-five, shall only be eligible for the benefits available
20 pursuant to subparagraph (iii) of paragraph (a) of subdivision two of
21 section four hundred twenty-one-a of the real property tax law if:

22 a. the construction is carried out with substantial assistance of
23 grants, loans or subsidies from any federal, state or local agency or
24 instrumentality and such assistance is provided pursuant to a program
25 for the development of affordable housing, or

26 b. the department of housing preservation and development has imposed
27 a requirement or has certified that twenty percent of the units be
28 restricted income units. All such restricted income units must be situ-
29 ated onsite.

30 (f) The department of housing preservation and development may promul-
31 gate rules and regulations to effectuate the purposes of this section.

32 (g) The limitations on eligibility for benefits contained in this
33 section shall be in addition to those contained in any other law, rule
34 or regulation.

35 (h) Notwithstanding anything to the contrary contained herein, the
36 limitations on eligibility for benefits contained in this section shall
37 not apply to a covered project as defined in subparagraph (i) of para-
38 graph a of subdivision six of section four hundred twenty-one-a of the
39 real property tax law.

40 § 11-245.2 Exemption for real property of certain water-works corpo-
41 rations. Real property owned by a water-works corporation subject to the
42 provisions of the public service law and used exclusively for the sale,
43 furnishing and distribution of water for domestic, commercial and public
44 purposes, shall not be taxable.

45 § 11-245.3 Exemption for persons sixty-five years of age or over. 1.
46 Real property owned by one or more persons, each of whom is sixty-five
47 years of age or over, or real property owned by husband and wife or by
48 siblings, one of whom is sixty-five years of age or over, or real prop-
49 erty owned by one or more persons, some of whom qualify under this
50 section and section 11-245.4 of this part shall be exempt from taxes on
51 real estate to the extent of fifty per centum of the assessed valuation
52 thereof. For the purposes of this section, siblings shall mean a brother
53 or a sister, whether related through halfblood, whole blood or adoption.

54 2. Exemption from taxation for school purposes shall not be granted in
55 the case of real property where a child resides if such child attends a
56 public school of elementary or secondary education.

1 3. No exemption shall be granted:

2 (a) if the income of the owner or the combined income of the owners of
3 the property exceeds the sum of twenty-six thousand dollars beginning
4 July first, two thousand six, twenty-seven thousand dollars beginning
5 July first, two thousand seven, twenty-eight thousand dollars beginning
6 July first, two thousand eight, twenty-nine thousand dollars beginning
7 July first, two thousand nine, and fifty thousand dollars beginning July
8 first, two thousand seventeen for the income tax year immediately
9 preceding the date of making application for exemption. Income tax year
10 shall mean the twelve-month period for which the owner or owners filed a
11 federal personal income tax return, or if no such return is filed, the
12 calendar year. Where title is vested in either the husband or the wife,
13 their combined income may not exceed such sum, except where the husband
14 or wife, or ex-husband or ex-wife is absent from the property as
15 provided in subparagraph (ii) of paragraph (d) of this subdivision, then
16 only the income of the spouse or ex-spouse residing on the property
17 shall be considered and may not exceed such sum. Such income shall
18 include social security and retirement benefits, interest, dividends,
19 total gain from the sale or exchange of a capital asset which may be
20 offset by a loss from the sale or exchange of a capital asset in the
21 same income tax year, net rental income, salary or earnings, and net
22 income from self-employment, but shall not include gifts, inheritances,
23 a return of capital, payments made to individuals because of their
24 status as victims of Nazi persecution as defined in P.L. 103-286, monies
25 earned through employment in the federal foster grandparent program, and
26 veterans disability compensation as defined in title 38 of the United
27 States Code, and any such income shall be offset by all medical and
28 prescription drug expenses actually paid which were not reimbursed or
29 paid for by insurance. In computing net rental income and net income
30 from self-employment no depreciation deduction shall be allowed for the
31 exhaustion, wear and tear of real or personal property held for the
32 production of income.

33 (b) unless the title of the property shall have been vested in the
34 owner or one of the owners of the property for at least twelve consec-
35 utive months prior to the date of making application for exemption,
36 provided, however, that in the event of the death of either husband or
37 wife in whose name title of the property shall have been vested at the
38 time of death and then becomes vested solely in the survivor by virtue
39 of devise by or descent from the deceased husband or wife, the time of
40 ownership of the property by the deceased husband or wife shall be
41 deemed also a time of ownership by the survivor and such ownership shall
42 be deemed continuous for the purposes of computing such period of twelve
43 consecutive months, and provided further, that in the event of a trans-
44 fer by either husband or wife to the other spouse of all or part of the
45 title to the property, the time of ownership of the property by the
46 transferer spouse shall be deemed also a time of ownership by the trans-
47 feree spouse and such ownership shall be deemed continuous for the
48 purposes of computing such period of twelve consecutive months, and
49 provided further, that where property of the owner or owners has been
50 acquired to replace property formerly owned by such owner or owners and
51 taken by eminent domain or other involuntary proceeding, except a tax
52 sale, and where a residence is sold and replaced with another within one
53 year and both are within the state, the period of ownership of the
54 former property shall be combined with the period of ownership of the
55 property for which application is made for exemption and such periods of
56 ownership shall be deemed to be consecutive for purposes of this

1 section. Where the owner or owners transfer title to property which as
2 of the date of transfer was exempt from taxation under the provisions of
3 this section, the reacquisition of title by such owner or owners within
4 nine months of the date of transfer shall be deemed to satisfy the
5 requirement of this paragraph that the title of the property shall have
6 been vested in the owner or one of the owners for such period of twelve
7 consecutive months. Where, upon or subsequent to the death of an owner
8 or owners, title to property which as of the date of such death was
9 exempt from taxation under such provisions, becomes vested, by virtue of
10 devise or descent from the deceased owner or owners, or by transfer by
11 any other means within nine months after such death, solely in a person
12 or persons who, at the time of such death, maintained such property as a
13 primary residence, the requirement of this paragraph that the title of
14 the property shall have been vested in the owner or one of the owners
15 for such period of twelve consecutive months shall be deemed satisfied;

16 (c) unless the property is used exclusively for residential purposes,
17 provided, however, that in the event any portion of such property is not
18 so used exclusively for residential purposes but is used for other
19 purposes, such portion shall be subject to taxation and the remaining
20 portion only shall be entitled to the exemption provided by this
21 section;

22 (d) unless the property is the legal residence of and is occupied in
23 whole or in part by the owner or by all of the owners of the property;
24 except where, (i) an owner is absent from the residence while receiving
25 health-related care as an inpatient of a residential health care facili-
26 ty, as defined in section twenty-eight hundred one of the public health
27 law, provided that any income accruing to that person shall be income
28 only to the extent that it exceeds the amount paid by such owner,
29 spouse, or co-owner for care in the facility, and provided further, that
30 during such confinement such property is not occupied by other than the
31 spouse or co-owner of such owner; or, (ii) the real property is owned by
32 a husband and/or wife, or an ex-husband and/or an ex-wife, and either is
33 absent from the residence due to divorce, legal separation or abandon-
34 ment and all other provisions of this section are met provided that
35 where an exemption was previously granted when both resided on the prop-
36 erty, then the person remaining on the real property shall be sixty-two
37 years of age or over.

38 4. Application for such exemption must be made by the owner, or all of
39 the owners of the property, on forms prescribed by the state board to be
40 furnished by the department of finance and shall furnish the information
41 and must be executed in the manner required or prescribed in such form
42 and shall be filed in the department of finance in the borough in which
43 the real property is located between the fifteenth day of January and
44 the fifteenth day of March. Notwithstanding any other provision of law,
45 any person otherwise qualifying under this section shall not be denied
46 the exemption under this section if he or she becomes sixty-five years
47 of age after the taxable status date and on or before December thirty-
48 first of the same year.

49 5. At least sixty days prior to the fifteenth day of January the
50 department of finance shall mail to each person who was granted
51 exemption pursuant to this section on the latest completed assessment
52 roll an application form and a notice that such application must be
53 filed between the fifteenth day of January and the fifteenth day of
54 March every two years from the year in which such exemption was granted
55 and be approved in order for the exemption to be granted. The department
56 of finance shall, within three days of the completion and filing of the

1 tentative assessment roll, notify by mail any applicant who has included
 2 with his application at least one self-addressed, prepaid envelope, of
 3 the approval or denial of the application; provided, however, where an
 4 applicant has included two such envelopes, the department of finance
 5 shall, upon the filing of the application, send by mail, notice of
 6 receipt of that application. Where an applicant is entitled to notice of
 7 denial provided herein, such notice shall state the reasons for such
 8 denial and shall further state that such determination is reviewable in
 9 a manner provided by law. Failure to mail any such application form or
 10 notices or the failure of such person to receive any or all of the same
 11 shall not prevent the levy, collection and enforcement of the payment of
 12 the taxes on property owned by such person.

13 6. Any conviction of having made any willful false statement in the
 14 application for such exemption shall be punishable by a fine of not more
 15 than one hundred dollars and shall disqualify the applicant or appli-
 16 cants from further exemption for a period of five years.

17 7. Notwithstanding the maximum income exemption eligibility level
 18 provided in subdivision three of this section, an exemption, subject to
 19 all other provisions of this section, shall be granted as indicated in
 20 the following schedule:

21	Annual Income	Percentage Assessed Valuation
22	as of July 1, 2006	Exempt From Taxation
23	More than \$26,000 but less than \$27,000	45 per centum
24	\$27,000 or more but less than \$28,000	40 per centum
25	\$28,000 or more but less than \$29,000	35 per centum
26	\$29,000 or more but less than \$29,900	30 per centum
27	\$29,900 or more but less than \$30,800	25 per centum
28	\$30,800 or more but less than \$31,700	20 per centum
29	\$31,700 or more but less than \$32,600	15 per centum
30	\$32,600 or more but less than \$33,500	10 per centum
31	\$33,500 or more but less than \$34,400	5 per centum

32	Annual Income as of July 1, 2007	Percentage Assessed Valuation
33		Exempt From Taxation
34	More than \$27,000 but less than \$28,000	45 per centum
35	\$28,000 or more but less than \$29,000	40 per centum
36	\$29,000 or more but less than \$30,000	35 per centum
37	\$30,000 or more but less than \$30,900	30 per centum
38	\$30,900 or more but less than \$31,800	25 per centum
39	\$31,800 or more but less than \$32,700	20 per centum
40	\$32,700 or more but less than \$33,600	15 per centum
41	\$33,600 or more but less than \$34,500	10 per centum
42	\$34,500 or more but less than \$35,400	5 per centum

43	Annual Income as of July 1, 2008	Percentage Assessed Valuation
44		Exempt From Taxation
45	More than \$28,000 but less than \$29,000	45 per centum
46	\$29,000 or more but less than \$30,000	40 per centum
47	\$30,000 or more but less than \$31,000	35 per centum
48	\$31,000 or more but less than \$31,900	30 per centum
49	\$31,900 or more but less than \$32,800	25 per centum
50	\$32,800 or more but less than \$33,700	20 per centum

1	\$33,700 or more but less than \$34,600	15 per centum
2	\$34,600 or more but less than \$35,500	10 per centum
3	\$35,500 or more but less than \$36,400	5 per centum

4		Percentage Assessed Valuation
5	Annual Income as of July 1, 2009	Exempt From Taxation
6	More than \$29,000 but less than \$30,000	45 per centum
7	\$30,000 or more but less than \$31,000	40 per centum
8	\$31,000 or more but less than \$32,000	35 per centum
9	\$32,000 or more but less than \$32,900	30 per centum
10	\$32,900 or more but less than \$33,800	25 per centum
11	\$33,800 or more but less than \$34,700	20 per centum
12	\$34,700 or more but less than \$35,600	15 per centum
13	\$35,600 or more but less than \$36,500	10 per centum
14	\$36,500 or more but less than \$37,400	5 per centum

15	Annual Income as of July 1, 2017	Percentage Assessed Valuation
16		Exempt From Taxation
17	More than \$50,000 but less than \$51,000	45 per centum
18	\$51,000 or more but less than \$52,000	40 per centum
19	\$52,000 or more but less than \$53,000	35 per centum
20	\$53,000 or more but less than \$53,900	30 per centum
21	\$53,900 or more but less than \$54,800	25 per centum
22	\$54,800 or more but less than \$55,700	20 per centum
23	\$55,700 or more but less than \$56,600	15 per centum
24	\$56,600 or more but less than \$57,500	10 per centum
25	\$57,500 or more but less than \$58,400	5 per centum

26 8. Any exemption provided by this section shall be computed after all
 27 partial exemptions allowed by law have been subtracted from the total
 28 amount assessed.

29 9. Exemption from taxation as provided in this section on real proper-
 30 ty owned by husband and wife, one of whom is sixty-five years of age or
 31 older, once granted, shall not be rescinded solely because of the death
 32 of the older spouse so long as the surviving spouse is at least sixty-
 33 two years of age.

34 10. a. For the purposes of this section, title to that portion of real
 35 property owned by a cooperative apartment corporation in which a
 36 tenant-stockholder of such corporation resides and which is represented
 37 by his or her share or shares of stock in such corporation as determined
 38 by its or their proportional relationship to the total outstanding stock
 39 of the corporation, including that owned by the corporation, shall be
 40 deemed to be vested in such tenant-stockholder. That proportion of the
 41 assessment of real property owned by a cooperative apartment corpo-
 42 ration, determined by the relationship of such real property vested in
 43 such tenant-stockholder to such entire parcel and the buildings thereon
 44 owned by such cooperative apartment corporation in which such tenant-
 45 stockholder resides, shall be subject to exemption from taxation pursu-
 46 ant to this section and any exemption so granted shall be credited by
 47 the department of finance against the assessed valuation of such real
 48 property; the reduction in real property taxes realized thereby shall be
 49 credited by the cooperative apartment corporation against the amount of
 50 such taxes otherwise payable by or chargeable to such tenant-stockhold-
 51 er. Each cooperative apartment corporation shall notify each tenant-

1 stockholder in residence thereof of such provisions as are set forth in
2 this section.

3 b. Notwithstanding any other provision of law, a tenant-stockholder
4 who resides in a dwelling which is subject to the provisions of either
5 article two, four, five or eleven of the private housing finance law and
6 who is eligible for a rent increase exemption pursuant to chapter seven
7 of title twenty-six of the code of the preceding municipality shall not
8 be eligible for an exemption pursuant to this subdivision. Notwithstand-
9 ing any other provision of law, a tenant-stockholder who resides in a
10 dwelling which is subject to the provisions of either article two, four,
11 five or eleven of the private housing finance law and who is not eligi-
12 ble for a rent increase exemption pursuant to chapter seven of title
13 twenty-six of this code but who meets the requirements for eligibility
14 for an exemption pursuant to this section shall be eligible for such
15 exemption provided that such exemption shall be in an amount determined
16 by multiplying the exemption otherwise allowable pursuant to this
17 section by a fraction having a numerator equal to the amount of real
18 property taxes or payments in lieu of taxes that were paid with respect
19 to such dwelling and a denominator equal to the full amount of real
20 property taxes that would have been owed with respect to such dwelling
21 had it not been granted an exemption or abatement of real property taxes
22 pursuant to any provision of law, provided, however, that any reduction
23 in real property taxes received with respect to such dwelling pursuant
24 to chapter seven of title twenty-six of this code or pursuant to this
25 section shall not be considered in calculating such numerator. Any
26 tenant-stockholder who resides in a dwelling which was or continues to
27 be subject to a mortgage insured or initially insured by the federal
28 government pursuant to section two hundred thirteen of the national
29 housing act, as amended, and who is eligible for both a rent increase
30 exemption pursuant to chapter seven of title twenty-six of this code and
31 an exemption pursuant to this subdivision, may apply for and receive
32 either a rent increase exemption pursuant to such chapter or an
33 exemption pursuant to this subdivision, but not both.

34 11. Exemption Option. Notwithstanding any provision of this part to
35 the contrary, real property owned by one or more persons where one of
36 such owners qualifies for a real property tax exemption pursuant to this
37 section or section 11-245.4 of this part, and another of such owners
38 qualifies for a different tax exemption pursuant to such sections of
39 this part as authorized by state law, such owners shall have the option
40 of choosing the one exemption which is most beneficial to such owners.
41 Such owners shall not be prohibited from taking one such exemption sole-
42 ly on the basis that such owners qualify for more than one exemption and
43 therefore are not eligible for any exemptions.

44 § 11-245.4 Exemption for persons with disabilities. 1. (a) Real prop-
45 erty owned by one or more persons with disabilities, or real property
46 owned by a husband, wife, or both, or by siblings, at least one of whom
47 has a disability, or real property owned by one or more persons, some of
48 whom qualify under this section and section 11-245.3 of this part, and
49 whose income, as hereafter defined, is limited by reason of such disa-
50 bility, shall be exempt from taxes on real estate to the extent of fifty
51 per centum of the assessed valuation thereof as hereinafter provided.
52 For purposes of this section, sibling shall mean a brother or a sister,
53 whether related through half blood, whole blood or adoption.

54 (b) For purposes of this section, a person with a disability is one
55 who has a physical or mental impairment, not due to current use of alco-
56 hol or illegal drug use, which substantially limits such person's abili-

1 ty to engage in one or more major life activities, such as caring for
2 one's self, performing manual tasks, walking, seeing, hearing, speaking,
3 breathing, learning and working, and who (i) is certified to receive
4 social security disability insurance (SSDI) or supplemental security
5 income (SSI) benefits under the federal social security act, or (ii) is
6 certified to receive railroad retirement disability benefits under the
7 federal railroad retirement act, or (iii) has received a certificate
8 from the state commission for the blind and visually handicapped stating
9 that such person is legally blind, or (iv) is certified to receive a
10 United States postal service disability pension. An award letter from
11 the social security administration or the railroad retirement board or a
12 certificate from the state commission for the blind and visually hand-
13 icapped or an award letter from the United States postal service shall
14 be submitted as proof of disability.

15 2. Exemption from taxation for school purposes shall not be granted in
16 the case of real property where a child resides if such child attends a
17 public school of elementary or secondary education.

18 3. No exemption shall be granted:

19 (a) if the income of the owner or the combined income of the owners of
20 the property for the income tax year immediately preceding the date of
21 making application for exemption exceeds the sum of twenty-six thousand
22 dollars beginning July first, two thousand six, twenty-seven thousand
23 dollars beginning July first, two thousand seven, twenty-eight thousand
24 dollars beginning July first, two thousand eight, twenty-nine thousand
25 dollars beginning July first, two thousand nine, and fifty thousand
26 dollars beginning July first, two thousand seventeen. Income tax year
27 shall mean the twelve-month period for which the owner or owners filed a
28 federal personal income tax return, or if no such return is filed, the
29 calendar year. Where title is vested in either the husband or the wife,
30 their combined income may not exceed such sum, except where the husband
31 or wife, or ex-husband or ex-wife is absent from the property due to
32 divorce, legal separation or abandonment, then only the income of the
33 spouse or ex-spouse residing on the property shall be considered and may
34 not exceed such sum. Such income shall include social security and
35 retirement benefits, interest, dividends, total gain from the sale or
36 exchange of a capital asset which may be offset by a loss from the sale
37 or exchange of a capital asset in the same income tax year, net rental
38 income, salary or earnings, and net income from self-employment, but
39 shall not include a return of capital, gifts, inheritances or monies
40 earned through employment in the federal foster grandparent program and
41 any such income shall be offset by all medical and prescription drug
42 expenses actually paid which were not reimbursed or paid for by insur-
43 ance. In computing net rental income and net income from self-employment
44 no depreciation deduction shall be allowed for the exhaustion, wear and
45 tear of real or personal property held for the production of income;

46 (b) unless the property is used exclusively for residential purposes,
47 provided, however, that in the event any portion of such property is not
48 so used exclusively for residential purposes but is used for other
49 purposes, such portion shall be subject to taxation and the remaining
50 portion only shall be entitled to the exemption provided by this
51 section;

52 (c) unless the real property is the legal residence of and is occupied
53 in whole or in part by the disabled person; except where the disabled
54 person is absent from the residence while receiving health-related care
55 as an inpatient of a residential health care facility, as defined in
56 section twenty-eight hundred one of the public health law, provided that

1 any income accruing to that person shall be considered income for
 2 purposes of this section only to the extent that it exceeds the amount
 3 paid by such person or spouse or sibling of such person for care in the
 4 facility.

5 4. Application for such exemption must be made annually by the owner,
 6 or all of the owners of the property, on forms prescribed by the state
 7 board, and shall be filed with the department of finance on or before
 8 the fifteenth day of March of the appropriate year; provided, however,
 9 proof of a permanent disability need be submitted only in the year
 10 exemption pursuant to this section is first sought or the disability is
 11 first determined to be permanent.

12 5. At least sixty days prior to the fifteenth day of March of the
 13 appropriate year, the department of finance shall mail to each person
 14 who was granted exemption pursuant to this section on the latest
 15 completed assessment roll an application form and a notice that such
 16 application must be filed on or before the fifteenth day of March and be
 17 approved in order for the exemption to continue to be granted. Failure
 18 to mail such application form or the failure of such person to receive
 19 the same shall not prevent the levy, collection and enforcement of the
 20 payment of the taxes on property owned by such person.

21 6. Notwithstanding the maximum income exemption eligibility level
 22 provided in subdivision three of this section, an exemption, subject to
 23 all other provisions of this section, shall be granted as indicated in
 24 the following schedule:

25	Percentage Assessed Valuation
26 Annual Income as of July 1, 2006	Exempt From Taxation
27 More than \$26,000 but less than \$27,000	45 per centum
28 \$27,000 or more but less than \$28,000	40 per centum
29 \$28,000 or more but less than \$29,000	35 per centum
30 \$29,000 or more but less than \$29,900	30 per centum
31 \$29,900 or more but less than \$30,800	25 per centum
32 \$30,800 or more but less than \$31,700	20 per centum
33 \$31,700 or more but less than \$32,600	15 per centum
34 \$32,600 or more but less than \$33,500	10 per centum
35 \$33,500 or more but less than \$34,400	5 per centum

36	Percentage Assessed Valuation
37 Annual Income as of July 1, 2007	Exempt From Taxation
38 More than \$27,000 but less than \$28,000	45 per centum
39 \$28,000 or more but less than \$29,000	40 per centum
40 \$29,000 or more but less than \$30,000	35 per centum
41 \$30,000 or more but less than \$30,900	30 per centum
42 \$30,900 or more but less than \$31,800	25 per centum
43 \$31,800 or more but less than \$32,700	20 per centum
44 \$32,700 or more but less than \$33,600	15 per centum
45 \$33,600 or more but less than \$34,500	10 per centum
46 \$34,500 or more but less than \$35,400	5 per centum

1 2 Annual Income as of July 1, 2008	Percentage Assessed Valuation Exempt From Taxation
3 More than \$28,000 but less than \$29,000	45 per centum
4 \$29,000 or more but less than \$30,000	40 per centum
5 \$30,000 or more but less than \$31,000	35 per centum
6 \$31,000 or more but less than \$31,900	30 per centum
7 \$31,900 or more but less than \$32,800	25 per centum
8 \$32,800 or more but less than \$33,700	20 per centum
9 \$33,700 or more but less than \$34,600	15 per centum
10 \$34,600 or more but less than \$35,500	10 per centum
11 \$35,500 or more but less than \$36,400	5 per centum

12 13 Annual Income as of July 1, 2009	Percentage Assessed Valuation Exempt From Taxation
14 More than \$29,000 but less than \$30,000	45 per centum
15 \$30,000 or more but less than \$31,000	40 per centum
16 \$31,000 or more but less than \$32,000	35 per centum
17 \$32,000 or more but less than \$32,900	30 per centum
18 \$32,900 or more but less than \$33,800	25 per centum
19 \$33,800 or more but less than \$34,700	20 per centum
20 \$34,700 or more but less than \$35,600	15 per centum
21 \$35,600 or more but less than \$36,500	10 per centum
22 \$36,500 or more but less than \$37,400	5 per centum

23 24 Annual Income as of July 1, 2017	Percentage Assessed Valuation Exempt From Taxation
25 More than \$50,000 but less than \$51,000	45 per centum
26 \$51,000 or more but less than \$52,000	40 per centum
27 \$52,000 or more but less than \$53,000	35 per centum
28 \$53,000 or more but less than \$53,900	30 per centum
29 \$53,900 or more but less than \$54,800	25 per centum
30 \$54,800 or more but less than \$55,700	20 per centum
31 \$55,700 or more but less than \$56,600	15 per centum
32 \$56,600 or more but less than \$57,500	10 per centum
33 \$57,500 or more but less than \$58,400	5 per centum

34 7. Any exemption provided by this section shall be computed after all
35 other partial exemptions allowed by law have been subtracted from the
36 total amount assessed; provided, however, that no parcel may receive an
37 exemption pursuant to both this section and section 11-245.3.

38 8. (a) For purposes of this section, title to that portion of real
39 property owned by a cooperative apartment corporation in which a
40 tenant-stockholder of such corporation resides, and which is represented
41 by his or her share or shares of stock in such corporation as determined
42 by its or their proportional relationship to the total outstanding stock
43 of the corporation, including that owned by the corporation, shall be
44 deemed to be vested in such tenant-stockholder. That proportion of the
45 assessment of such real property owned by a cooperative apartment corpo-
46 ration determined by the relationship of such real property vested in
47 such tenant-stockholder to such entire parcel and the buildings thereon
48 owned by such cooperative apartment corporation in which such tenant-
49 stockholder resides shall be subject to exemption from taxation pursuant
50 to this section and any exemption so granted shall be credited by the

1 department of finance against the assessed valuation of such real prop-
2 erty; the reduction in real property taxes realized thereby shall be
3 credited by the cooperative apartment corporation against the amount of
4 such taxes otherwise payable by or chargeable to such tenant-stockhold-
5 er.

6 (b) Notwithstanding any other provision of law, a tenant-stockholder
7 who resides in a dwelling which is subject to the provisions of either
8 article two, four, five or eleven of the private housing finance law
9 shall not be eligible for an exemption pursuant to this subdivision.

10 9. Notwithstanding any other provision of law to the contrary, the
11 provisions of this section shall apply to real property held in trust
12 solely for the benefit of a person or persons who would otherwise be
13 eligible for a real property tax exemption, pursuant to subdivision one
14 of this section, were such person or persons the owner or owners of such
15 real property.

16 10. Exemption Option. Notwithstanding any provision of this part to
17 the contrary, real property owned by one or more persons where one of
18 such owners qualifies for a real property tax exemption pursuant to this
19 section or section 11-245.3 of this part, and another of such owners
20 qualifies for a different tax exemption pursuant to such sections of
21 this part as authorized by state law, such owners shall have the option
22 of choosing the one exemption which is most beneficial to such owners.
23 Such owners shall not be prohibited from taking one such exemption sole-
24 ly on the basis that such owners qualify for more than one exemption and
25 therefore are not eligible for any exemptions.

26 § 11-245.45 Exemption for veterans. Pursuant to paragraph (d) of
27 subdivision eight of section four hundred fifty-eight of the real prop-
28 erty tax law, the city hereby authorizes real property owned by a coop-
29 erative apartment corporation to be exempt from taxation in accordance
30 with such section and any local laws adopted pursuant to such section
31 beginning July first, nineteen hundred ninety-eight.

32 § 11-245.46 Exemption for veterans; taxes for school purposes
33 exempted. Pursuant to paragraph three of subdivision one of section
34 four hundred fifty-eight of the real property tax law, the city hereby
35 provides that the exemption authorized pursuant to such section shall be
36 applicable to taxes for school purposes.

37 § 11-245.5 Alternative exemption for veterans. Pursuant to paragraph
38 (d) of subdivision six of section four hundred fifty-eight-a of the real
39 property tax law, the city hereby authorizes real property owned by a
40 cooperative apartment corporation to be exempt from taxation in accord-
41 ance with such section and any local laws adopted pursuant to such
42 section beginning July first, nineteen hundred ninety-eight.

43 § 11-245.6 Alternative exemption for veterans; maximum exemptions
44 allowable. Pursuant to subparagraph (ii) of paragraph (d) of subdivision
45 two of section four hundred fifty-eight-a of the real property tax law,
46 the city hereby increases the maximum exemptions allowable in paragraphs
47 (a), (b) and (c) of subdivision two of section four hundred
48 fifty-eight-a of the real property tax law. The maximum exemption allow-
49 able in such paragraph (a) shall be fifteen percent of the assessed
50 value of the qualifying residential real property; provided, however,
51 that such exemption shall not exceed forty-eight thousand dollars or the
52 product of forty-eight thousand dollars multiplied by the latest class
53 ratio, whichever is less. In addition to the exemption provided by such
54 paragraph (a), as increased by this section, the maximum exemption
55 allowable in such paragraph (b) shall be ten percent of the assessed
56 value of the qualifying residential real property; provided, however,

1 that such exemption shall not exceed thirty-two thousand dollars or the
2 product of thirty-two thousand dollars multiplied by the latest class
3 ratio, whichever is less. In addition to the exemptions provided by such
4 paragraphs (a) and (b), as increased by this section, the maximum
5 exemption allowable in such paragraph (c) shall be the product of the
6 assessed value of the qualifying residential real property multiplied by
7 fifty percent of the veteran's disability rating; provided, however,
8 that such exemption shall not exceed one hundred sixty thousand dollars
9 or the product of one hundred sixty thousand dollars multiplied by the
10 latest class ratio, whichever is less. The maximum exemptions allowable
11 in such paragraphs (a), (b) and (c), as increased by this section, shall
12 not apply to any assessment roll completed and filed prior to the first
13 day of January, two thousand six.

14 § 11-245.7 Alternative exemption for veterans; gold star parent.
15 Pursuant to paragraph (b) of subdivision seven of section four hundred
16 fifty-eight-a of the real property tax law, and in accordance with such
17 section and any local laws adopted pursuant thereto, the city hereby
18 includes a gold star parent within the definition of "qualified owner"
19 as provided in paragraph (c) of subdivision one of such section, and
20 includes property owned by a gold star parent within the definition of
21 "qualifying residential real property" as provided in paragraph (d) of
22 subdivision one of such section, provided that such property is the
23 primary residence of the gold star parent.

24 § 11-245.75 Alternative exemption for veterans; school district taxa-
25 tion exempted. Pursuant to subparagraph (i) of paragraph (d) of subdivi-
26 sion two of section four hundred fifty-eight-a of the real property tax
27 law, the city hereby provides that the exemptions allowable in para-
28 graphs (a), (b) and (c) of subdivision two of section four hundred
29 fifty-eight-a of the real property tax law shall be applicable to school
30 district taxation.

31 § 11-245.8 ENERGY STAR appliances. a. For the purposes of this
32 section, the following definitions shall apply in conjunction with the
33 definitions found in sections 27-232 and 27-2004 of this code:

34 (1) The term "ENERGY STAR" shall mean a designation from the United
35 States environmental protection agency or department of energy indicat-
36 ing that a product meets the energy efficiency standards set forth by
37 the agency for compliance with the ENERGY STAR program.

38 (2) The term "household appliance" shall mean any refrigerator, room
39 air conditioner, dishwasher or clothes washer, within a dwelling unit in
40 a multiple dwelling that is provided by the owner of such multiple
41 dwelling. This definition shall also include any boiler or furnace that
42 provides heat or hot water for any dwelling unit in a multiple dwelling.

43 b. For any building for which any benefit is conferred pursuant to
44 four hundred eighty-nine of the real property tax law, whenever any
45 household appliance in any dwelling unit, or any household appliance
46 that provides heat or hot water for any dwelling unit in a multiple
47 dwelling, is installed or replaced with a new household appliance, such
48 new appliance shall be certified as Energy Star.

49 c. For any building for which any benefit is conferred pursuant to
50 section four hundred twenty-one-a of the real property tax law, whenever
51 any household appliance in any dwelling unit, or any household appliance
52 that provides heat or hot water for any dwelling unit in a multiple
53 dwelling, is installed or replaced with a new household appliance, such
54 new appliance shall be certified as Energy Star.

55 d. The commissioner may enact rules requiring additional energy
56 conservation measures for any building for which any benefit is

1 conferred pursuant to section four hundred eighty-nine of the real prop-
2 erty tax law or section four hundred twenty-one-a of the real property
3 tax law.

4 e. The commissioner shall inform applicants for any benefits affected
5 by this section of the requirements of this section.

6 f. The requirements of subdivisions b and c of this section shall not
7 apply where:

8 1) an ENERGY STAR certified household appliance of appropriate size is
9 not manufactured, such that movement of walls or fixtures would be
10 necessary to create sufficient space for such appliance; or

11 2) an ENERGY STAR certified boiler or furnace of sufficient capacity
12 is not manufactured.

13 § 11-245.9 Notice of residential property tax exemptions. a. The
14 commissioner of finance, or his or her designee, shall provide a notice
15 relating to the lien sale process to all property owners included with
16 the notice of value sent to property owners by the department of finance
17 and, in addition, no later than October thirty-first of each year, to
18 any property owner who is delinquent in the payment of any real property
19 taxes, assessments, or any other charges that are made a lien subject to
20 the provisions of chapter three of this title, except sewer rents, sewer
21 charges and water rents, if such delinquency, in the aggregate, equals
22 or exceeds the sum of one thousand dollars. This notice shall include,
23 but not be limited to, actions homeowners can take if a lien is sold on
24 such property; the type of debt that can be sold in a lien sale; a time-
25 line of statutory notifications required pursuant to section 11-320 of
26 this title; a clear, concise explanation of the consequences of the sale
27 of a tax lien; the telephone number and electronic mail address of the
28 employee or employees designated pursuant to subdivision f of section
29 11-320 of this title; a conspicuous statement that an owner of any class
30 of property may enter into a payment plan for the satisfaction of delin-
31 quent real property taxes, assessments, sewer rents, sewer surcharges,
32 water rents, and any other charges that are made a lien subject to the
33 provisions of chapter three of this title, or exclusion from the tax
34 lien sale; credits and property tax exemptions that may exclude certain
35 class one real property from a tax lien sale; and clear and concise
36 instructions on how an owner of any class of property may register to
37 receive information from the department, through electronic mail,
38 regarding outreach sessions relating to the sale of tax liens conducted
39 pursuant to subdivision j of section 11-320 of this title. Such notice
40 shall also include information on the following real property tax cred-
41 its or real property tax exemptions:

42 1. the senior citizen homeowner exemption pursuant to section 11-245.3
43 of this part;

44 2. the exemption for persons with disabilities pursuant to section
45 11-245.4 of this part;

46 3. the exemptions for veterans pursuant to sections four hundred
47 fifty-eight and four hundred fifty-eight-a of the real property tax law;

48 4. the school tax relief (STAR) exemption pursuant to section four
49 hundred twenty-five of the real property tax law;

50 5. the enhanced school tax relief (STAR) exemption pursuant to subdi-
51 vision four of section four hundred twenty-five of the real property tax
52 law;

53 6. the state circuit breaker income tax credit pursuant to subsection
54 (e) of section six hundred six of the tax law; and

1 7. any other credit or residential real property tax exemption, which,
2 in the discretion of the commissioner, should be included in such
3 notice.

4 Upon such property owner's written request, or verbal request to 311
5 or any employee designated pursuant to subdivision f of section 11-320
6 of this title, a Chinese, Korean, Russian or Spanish translation of such
7 notice shall be provided promptly to such property owner.

8 b. The notice required pursuant to this section shall include:

9 1. a brief description of each exemption program; and

10 2. a phone number at the department and a website address where
11 taxpayers can obtain additional information on the exemption programs
12 and all necessary forms and applications.

13 c. The notice that is required, pursuant to this section, to be
14 provided by the commissioner of finance or his or her designee no later
15 than October thirty-first of each year shall include contact information
16 for the office of financial empowerment at the department of consumer
17 and worker protection.

18 § 11-245.10 Alternative exemption for veterans; transfer of title. 1.
19 Pursuant to subdivision eight of section four hundred fifty-eight-a of
20 the real property tax law, where a veteran, the spouse of a veteran or
21 unremarried surviving spouse already receiving an exemption pursuant to
22 such section sells the property receiving such exemption and purchases
23 property within the city, the department of finance shall transfer and
24 prorate, for the remainder of the fiscal year, the exemption received.
25 The prorated exemption shall be based upon the date the veteran, the
26 spouse of the veteran or unremarried surviving spouse obtains title to
27 the new property and shall be calculated by multiplying the tax rate for
28 which taxes were levied, on the appropriate tax roll used for the fiscal
29 year during which the transfer occurred, multiplied by the previously
30 granted exempt amount, multiplied by the fraction of each fiscal year
31 remaining subsequent to the transfer of title.

32 2. Nothing in this section shall be construed to remove the require-
33 ment that any such veteran, the spouse of the veteran or unremarried
34 surviving spouse transferring an exemption pursuant to subdivision one
35 of this section shall reapply for the exemption authorized pursuant to
36 section four hundred fifty-eight-a of the real property tax law on or
37 before the following taxable status date, in the event such veteran, the
38 spouse of the veteran or unremarried surviving spouse wishes to receive
39 the exemption in future fiscal years.

40 PART 2

41 EXEMPTION FOR CERTAIN NONPROFIT ORGANIZATIONS

42 § 11-246 Taxation of property of nonprofit organizations, pharmaceu-
43 tical societies and dental societies. 1. a. Pursuant to the requirements
44 of sections four hundred twenty-a and four hundred forty-six of the real
45 property tax law, real property owned by a corporation or association
46 which is organized or conducted exclusively for religious, charitable,
47 hospital, educational or cemetery purposes, or for the purposes of the
48 moral or mental improvement of men, women or children or for two or more
49 such purposes shall not be taxable.

50 b. Real property owned by a corporation or association which is organ-
51 ized or conducted exclusively for Bible, tract, benevolent, missionary,
52 infirmary, public playground, scientific, literary, library, patriotic
53 or historical purposes, for the development of good sportsmanship for
54 persons under the age of eighteen years through the conduct of super-

1 vised athletic games, or for the enforcement of laws relating to chil-
2 dren or animals, or for two or more such purposes, and used exclusively
3 for carrying out thereupon one or more of such purposes either by the
4 owning corporation or association, or by another such corporation or
5 association as provided in section four hundred twenty-b of the real
6 property tax law shall not be taxable. Any corporation or association
7 which uses real property exempted from taxation pursuant to this para-
8 graph shall make available to the council, the commissioner of finance
9 and the public a report, in such form as may be prescribed by the
10 commissioner of finance, setting forth the efforts of such corporation
11 or association undertaken in the previous calendar year to provide
12 assistance to city programs and city residents, by filing such report
13 with the city clerk not later than June first of each year.

14 c. Real property owned by a corporation or association which is organ-
15 ized or conducted exclusively for bar association or medical society
16 purposes, or both such purposes, and used exclusively for carrying out
17 thereupon one or both such purposes either by the owning corporation or
18 association, or by another such corporation or association shall be
19 taxable pursuant to the authority contained in section four hundred
20 twenty-b of the real property tax law.

21 2. Real property from which no rent is derived and which is owned by
22 an incorporated pharmaceutical society which is either wholly or partly
23 within the city, which society has heretofore been or may hereafter be
24 authorized and empowered by act of the legislature to establish and
25 which has established or may hereafter establish a college of pharmacy
26 in this city shall be taxable.

27 3. Real property from which no income is derived which is owned by a
28 dental society of any judicial district which judicial district is whol-
29 ly or partly within the city, which dental society was incorporated
30 under the education law shall be taxable.

31 4. Real property previously exempt from taxation but made taxable
32 pursuant to this section as of the first of January, nineteen hundred
33 seventy-two shall be taxed for the period from the first of January to
34 and including the thirtieth of June, nineteen hundred seventy-two by
35 applying one-half of the tax rate for the fiscal year nineteen hundred
36 seventy-one, seventy-two to the assessments made and exemptions claimed
37 with reference to the taxable status date falling on the twenty-fifth of
38 January, nineteen hundred seventy-two. The taxes thus computed for the
39 period from the first of January to and including the thirtieth of June,
40 nineteen hundred seventy-two shall be due and payable on the first of
41 June, nineteen hundred seventy-two.

42 5. Real property which is taxable under this section shall be subject
43 to any special ad valorem levies and special assessments which are
44 imposed to defray the cost of improvements or services furnished by the
45 city.

46 § 11-246.1 Denial; information required. The commissioner of finance
47 shall include, in any written communication with a property owner
48 related to the denial of a real property tax exemption pursuant to
49 section four hundred twenty-a, four hundred twenty-b, four hundred
50 forty-six, or four hundred sixty-two of the real property tax law,
51 information on actions a property owner can take, upon notice of a sale
52 of a tax lien of property of such owner, that may prevent the sale of
53 such tax lien.

1
2
3

PART 3
TAX EXEMPTION FOR CERTAIN INDUSTRIAL AND
COMMERCIAL PROPERTIES

4 § 11-247 Definitions. When used in this part:

5 a. "Applicant" means any person or corporation obligated to pay real
6 property taxes on the property for which an exemption is sought, or in
7 the case of exempt property, the record owner thereof, provided, howev-
8 er, that such property is not commercial property located in an area
9 designated as excluded pursuant to section 11-249 of this part;

10 b. "Board" means the industrial and commercial incentive board;

11 c. "Commercial" means any non-residential property used primarily for
12 the buying, selling or otherwise providing of goods or services,
13 provided that the use of such property has not been designated as a
14 restricted commercial use pursuant to section 11-249 of this part;

15 d. "Construction" means the building of new industrial or commercial
16 structures on vacant or predominantly vacant land, or the modernization,
17 rehabilitation or expansion or other improvements of an existing commer-
18 cial structure where such modernization, rehabilitation, expansion or
19 other improvement is not physically or functionally integrated with the
20 existing structure or results in additional usable square footage fifty
21 per centum greater than the square footage of the existing structure;

22 e. "Industrial" means property used primarily for the manufacturing or
23 assembling of goods or the processing of raw materials;

24 f. "Predominantly vacant land" means land, including land under water,
25 on which not more than fifteen percent of the lot area contains
26 enclosed, permanent improvements; in addition, such land may include
27 existing foundations. A fence, shed, garage, attendant's booth, paving,
28 pier, bulkhead, lighting fixtures, and similar items, or any improvement
29 having an assessed value of less than two thousand dollars shall not
30 constitute an enclosed, permanent improvement;

31 g. "Reconstruction" means the modernization, rehabilitation, expansion
32 or other improvement of an existing commercial or industrial structure
33 where the total proposed project cost is in an amount equal to at least
34 twenty per centum of the assessed value of the property at the time an
35 application for a certificate of eligibility pursuant to this part is
36 made, and where such modernization, rehabilitation, expansion or other
37 improvement is physically and functionally integrated with the existing
38 structure and does not create additional usable square footage greater
39 than fifty per centum of the usable square footage of the existing
40 structure except in a case where the existing structure has been
41 substantially destroyed by fire or other casualty;

42 h. "Residential property" shall mean property, other than property
43 used for hotel purposes, on which will exist upon completion of
44 construction a building or structure containing more than one independ-
45 ent dwelling unit or where more than one-third of the total square
46 footage of said structure is to be used for residential purposes; it
47 shall also mean, in the case of reconstruction, property on which exists
48 or will exist upon completion of the reconstruction a building or struc-
49 ture where more than one-third of the total square footage is used or is
50 to be used for dwelling purposes;

51 i. "Vacant land" means land, including land under water, which
52 contains no enclosed, permanent improvement. A fence, shed, garage,
53 attendant's booth, paving, pier, bulkhead, lighting fixtures, and simi-
54 lar items, or any improvement having an assessed value of less than two

1 thousand dollars shall not constitute an enclosed, permanent improve-
2 ment.

3 § 11-248 Industrial and commercial incentive board. There shall be an
4 industrial and commercial incentive board to consist of the deputy mayor
5 who shall be chairperson of the board, the commissioner of finance, the
6 director of planning and the director of budget, each of whom shall have
7 the power to designate an alternate to represent him or her at board
8 meetings with all the rights and powers, including the right to vote,
9 reserved to all board members, provided that such designation be in
10 writing to the chairperson of the board, and three other members to be
11 appointed by the mayor. The members of the board who shall be agents,
12 officers, or employees of the city shall serve without compensation but
13 shall be reimbursed for expenses necessarily incurred in the performance
14 of their duties. The members of the board who are not agents, officers,
15 or employees of the city shall receive as compensation for their
16 services one hundred dollars per diem, provided, however, that the total
17 compensation paid to any such member shall not exceed twelve hundred
18 dollars for any calendar year. Four members of the board shall consti-
19 tute a quorum.

20 § 11-249 Functions, powers and duties of the board; annual desig-
21 nation of exemption areas and restricted commercial uses. a. The
22 members of the board shall have the following functions, powers and
23 duties:

24 1. to receive and review applications for certificates of eligibility
25 pursuant to the charter and pursuant to subdivision thirteen of section
26 11-604 and subdivision (e) of section 11-503 of this title;

27 2. to make findings and determinations on the qualifications of
28 applicants for certificates of eligibility pursuant to this part and
29 subdivision (e) of section 11-503 of this title;

30 3. to issue certificates of eligibility and amendments thereto;

31 4. to make recommendations to the tax commission on the termination of
32 a tax exemption pursuant to section 11-253 of this part;

33 5. to designate annually, pursuant to subdivision b of this section,
34 areas in which exemptions for commercial construction or reconstruction
35 shall be granted as of right, areas from which such exemptions shall be
36 excluded and commercial uses for which the granting of exemptions shall
37 be restricted; and

38 6. to make and promulgate rules and regulations to carry out the
39 purposes of the board.

40 b. (1) Not later than October first of each year the board shall
41 publish a notice at least once in the official paper or a newspaper of
42 general circulation in the city setting forth: (i) the proposed bounda-
43 ries of areas in which commercial construction or reconstruction shall
44 be granted exemptions as of right, proposed boundaries of areas from
45 which exemptions for commercial construction or reconstruction shall be
46 excluded and proposed restricted commercial uses; and (ii) the date, not
47 earlier than ten nor later than thirty days following the publication of
48 such notice, on which the board will hold a public hearing to hear all
49 persons interested in the designation of such boundaries and restricted
50 commercial uses.

51 (2) Not earlier than ten nor later than thirty days following the
52 conclusion of the public hearing provided for in paragraph one of this
53 subdivision, the board shall designate the boundaries of areas in which
54 exemptions for commercial construction or reconstruction shall be grant-
55 ed as of right and areas from which such exemptions shall be excluded

1 and shall also designate restricted commercial uses. Such designations
2 shall be made upon the following determinations:

3 (i) With respect to areas in which exemption for commercial
4 construction or reconstruction shall be granted as of right, the board
5 shall determine that market conditions in each area are such that
6 exemptions are required to attract commercial construction or recon-
7 struction to the area and that attracting such construction or recon-
8 struction, and the granting of exemptions therefor, are in the public
9 interest. In making such determination, the board may consider, among
10 other factors, that the area is experiencing economic distress or is
11 characterized by an unusually large number of vacant, underutilized,
12 unsuitable or substandard structures, or by other substandard, unsani-
13 tary, deteriorated or deteriorating conditions, with or without tangible
14 blight, or that commercial development in the area will be beneficial to
15 the city's economy.

16 (ii) With respect to areas from which exemptions for commercial
17 construction or reconstruction are to be excluded, the board shall
18 determine that market conditions in each area are such that exemptions
19 are not required to attract commercial construction or reconstruction to
20 the area, or that it is not in the public interest to grant exemptions
21 for commercial construction or reconstruction in the area. No applica-
22 tions for exemptions for commercial construction or reconstruction shall
23 be accepted from such areas.

24 (iii) With respect to restricted commercial uses, the board shall
25 determine that it is not in the public interest to grant exemptions for
26 such uses unless the board further determines that in certain areas
27 designated pursuant to this subdivision, such uses will have an espe-
28 cially positive impact on the area's economy. All applications for
29 exemptions for restricted commercial uses shall be determined pursuant
30 to paragraphs two and three of subdivision b of section 11-251 of this
31 part.

32 (3) Designations made pursuant to this subdivision shall be effective
33 on the first of January of each year.

34 c. So far as practicable and subject to the approval of the mayor, the
35 services of all other city departments and agencies shall be made avail-
36 able by their respective heads to the board for the carrying out of the
37 functions stated in this part. The head of any department or agency
38 shall furnish information in the possession of such department or agency
39 when the board, after consultation with the mayor, so requests.

40 § 11-250 Real property tax exemption. a. A real property tax
41 exemption pursuant to this part shall be granted to an applicant who,
42 within a period of thirty-six months, or following an extension pursuant
43 to section 11-254 of this part within a period of forty-eight months,
44 from the date of issuance of a certificate of eligibility has completed
45 reconstruction or construction work in accordance with the plans
46 approved by the board in the certificate of eligibility. The amount of
47 the tax exemption shall be determined as follows:

48 (1) In the case of an applicant who has completed industrial
49 construction or reconstruction work, or commercial reconstruction work
50 designated as of right pursuant to section 11-249 of this part or as
51 specially needed pursuant to section 11-251 of this part, the tax
52 exemption shall continue for nineteen tax years in an amount decreasing
53 by five per centum each year from an exemption of ninety-five per centum
54 of the exemption base, as defined in paragraph four of this subdivision.

55 (2) In the case of an applicant who has completed other commercial
56 reconstruction work, or new commercial construction work designated as

1 of right pursuant to section 11-249 of this part or as specially needed
2 pursuant to section 11-251 of this part, the tax exemption shall contin-
3 ue for ten tax years, in an amount decreasing by five per centum each
4 year from an exemption of fifty per centum of the exemption base.

5 (3) In the case of an applicant who has completed other new commercial
6 construction work, the exemption shall continue for five tax years in an
7 amount decreasing by ten per centum each year from an exemption of fifty
8 per centum of the exemption base.

9 (4) The term "exemption base" shall mean the difference between the
10 final assessed value of the property as determined upon completion of
11 the construction or reconstruction work and the lesser of (i) the
12 assessed value of the property at the time an application for certif-
13 icate of eligibility pursuant to this part is made, or (ii) the assessed
14 value as may thereafter be reduced pursuant to application to the tax
15 commission.

16 The tax exemption shall be computed according to the following tables:

17 CONSTRUCTION OR RECONSTRUCTION OF INDUSTRIAL STRUCTURES OR
18 RECONSTRUCTION OF AS OF RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

19 =====

20 Year following	21 completion	22 Percentage
23 of work		23 of exemption
24 1.....		24 95
25 2.....		25 90
26 3.....		26 85
27 4.....		27 80
28 5.....		28 75
29 6.....		29 70
30 7.....		30 65
31 8.....		31 60
32 9.....		32 55
33 10.....		33 50
34 11.....		34 45
35 12.....		35 40
36 13.....		36 35
37 14.....		37 30
38 15.....		38 25
39 16.....		39 20
40 17.....		40 15
41 18.....		41 10
42 19.....		42 5

43 =====

44 RECONSTRUCTION OF OTHER COMMERCIAL STRUCTURES OR CONSTRUCTION OF AS OF
45 RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

46 =====

47 Year following	48 completion of	49 Percentage
49 of work		49 of exemption

1	-----
2	1.....50
3	2.....45
4	3.....40
5	4.....35
6	5.....30
7	6.....25
8	7.....20
9	8.....15
10	9.....10
11	10..... 5
12	=====

CONSTRUCTION OF OTHER NEW COMMERCIAL STRUCTURES

13	=====	
14	Year following	Percentage
15	completion of	of exemption
16	work	
17	-----	-----
18	1.....50	
19	2.....40	
20	3.....30	
21	4.....20	
22	5.....10	
23	-----	-----
24	=====	=====

b. The taxes payable during the period from the issuance of a certificate of eligibility to the approval of the tax exemption pursuant to section 11-252 of this part shall be paid on the lesser of:

(1) the assessed value of the property at the time an application for a certificate of eligibility pursuant to this part is made, or

(2) the assessed value as may thereafter be reduced pursuant to application to the tax commission, provided, however, that if reconstruction or construction is not completed in accordance with the plans approved in the certificate of eligibility including any amendments thereto, taxes shall be due and payable retroactively as otherwise required by law.

c. In all cases where the board shall have issued a certificate of eligibility prior to January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the assessed valuation of the property during the tenure of the exemption. Where the board has issued a certificate of eligibility on or after January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the assessed valuation of the property during the first two years after approval of the tax exemption pursuant to section 11-252 of this part. Commencing two years after approval of the tax exemption pursuant to section 11-252 of this part, the exemption percentage shall apply to any subsequent increase in assessed valuation of the property only to the extent such increase is attributable to the construction or reconstruction work approved in the certificate of eligibility.

d. The provisions of this part shall not apply to any increase in assessed value resulting from the construction or reconstruction of a residential structure on any property receiving an exemption under the provisions of this part. The provisions of this part shall apply exclu-

1 sively to those structures and the lands underlying them which were
2 identified explicitly in the certificate of eligibility.

3 e. The provisions of this part shall not apply if any new or rehabili-
4 tated construction displaces or replaces a building or buildings
5 containing more than twenty-five occupied dwelling units in existence on
6 the date an application for certificate of eligibility is submitted for
7 preliminary approval pursuant to section 11-251 of this part, which are
8 administered under the local emergency housing rent control act, the
9 rent stabilization law of nineteen hundred sixty-nine or the emergency
10 tenant protection act of nineteen seventy-four, or their successor stat-
11 utes applicable to the city of Staten Island, unless a certificate of
12 eviction has been issued for any of the displaced or replaced units
13 pursuant to the powers granted by the city rent and rehabilitation law.

14 f. The provisions of this part shall not apply to an applicant who
15 has commenced construction or reconstruction work prior to the granting
16 of a certificate of eligibility except where applicant, having filed an
17 application for a certificate of eligibility, receives written permis-
18 sion to commence from the board or its designated representative prior
19 to the granting of a certificate of eligibility. Demolition of existing
20 structures, site preparation limited to grading, filling or clearing, or
21 the curing of a safety or sanitary hazard shall not be deemed to be
22 commencement of construction or reconstruction work.

23 g. Any property enjoying the benefits of a tax exemption approved by
24 the board shall be ineligible for any subsequent or additional tax
25 exemption pursuant to the provisions of this part until the expiration
26 of the original exemption period or earlier termination of the existing
27 exemption by action of the tax commission.

28 § 11-251 Applications for certificates of eligibility. a. Applica-
29 tions for a certificate of eligibility pursuant to this part shall be
30 submitted for preliminary approval to the office for economic develop-
31 ment commencing immediately after March first, nineteen hundred eighty-
32 two and continuing until the thirty-first of January, nineteen hundred
33 eighty-six, on such form or forms as shall be prescribed by the board.
34 In addition to any other information required by the board, the applica-
35 tion shall include plans for reconstruction or construction that have
36 been certified by a professional engineer or an architect of the appli-
37 cant's choice and cost estimates or bids for the proposed reconstruction
38 or construction. Upon a finding by such office that the application
39 satisfies the requirements of reconstruction or construction as defined
40 in this part, the application shall be presented to the board for evalu-
41 ation and written notice thereof shall be given to the community board
42 of the district in which the application site is located.

43 b. (1) In the case of an application for construction or recon-
44 struction of an industrial structure or a commercial structure located
45 in an area designated as of right, the board shall issue a certificate
46 of eligibility upon determining that the application satisfies the
47 requirements of construction or reconstruction as defined in this part,
48 that the applicant has obtained plans for construction or reconstruction
49 certified by a professional engineer or architect, and that the appli-
50 cant has otherwise complied with the provisions of this part and other
51 applicable provisions of law.

52 (2) In the case of an application for construction or reconstruction
53 of a commercial structure not located in an as of right area, or involv-
54 ing a restricted commercial use, the board shall issue a certificate of
55 eligibility upon making the determination specified in paragraph one of
56 this subdivision and upon making the further determination that the

1 granting of a tax exemption for the construction or reconstruction of
2 such a structure in the proposed location is in the public interest. In
3 making such determination, the board shall make findings that there is a
4 need in the area for the services the enterprise will provide, that the
5 enterprise will generate or retain employment in the area, and that a
6 tax incentive is required to attract construction or reconstruction of
7 such a structure to the area. In addition, the board shall consider the
8 economic impact such commercial structure will have in the area.

9 (3) In the case of an application for construction or reconstruction
10 of a commercial structure not located in an as of right area, or involv-
11 ing a restricted commercial use, the board may make a further determi-
12 nation that special circumstances warrant designating the proposed
13 construction or reconstruction as "specially needed". In making such
14 determination, the board shall make findings that the commercial
15 services to be provided will have an especially positive impact on the
16 area's or the city's economy and that the applicant has demonstrated
17 that the project cannot go forward without the greater exemption granted
18 by such designation.

19 c. Any meeting of the board at which an application for a certificate
20 of eligibility is to be considered shall be open to the public, and
21 notice of such meeting shall be given at least two weeks prior thereto
22 by publication in a newspaper of general circulation within the city.

23 d. The burden of proof shall be on the applicant to show by clear and
24 convincing evidence that the requirements for granting a tax exemption
25 pursuant to this part have been satisfied, and the board shall have the
26 authority to require that statements made in consideration of the appli-
27 cation be taken under oath.

28 e. After the issuance of a certificate of eligibility the applicant
29 shall apply to the city tax commission, during the period provided by
30 law for filing applications for corrections of assessed valuations, for
31 a tax exemption as provided for in section 11-250 of this part. The
32 application shall be accompanied by a copy of the certificate of eligi-
33 bility.

34 § 11-252 Approval of tax exemption. On completion of the recon-
35 struction or construction work the applicant shall notify the board in
36 writing of said completion. The board shall determine the eligibility
37 of the applicant for the tax exemption as provided in section 11-250 of
38 this part and shall notify the tax commission of such determination. If
39 the applicant is determined to be qualified the commission shall approve
40 the tax exemption.

41 § 11-253 Continuation of tax exemption; termination of tax exemption.
42 The tax exemption approved by the board shall continue in accordance
43 with this part, provided that the applicant files an annual certificate
44 of continuing use stating that the structure and property continue to be
45 used for the industrial or commercial purposes justifying the issuance
46 of the certificate of eligibility. The certificate of continuing use
47 shall be filed with the tax commission on such form or forms and
48 containing such information as shall be prescribed by the tax commis-
49 sion. The tax commission shall have authority to terminate a tax
50 exemption on failure of an applicant to file an annual certificate of
51 continuing use or on the recommendation of the commissioner of finance
52 who, in reviewing the certificate filed by an applicant, has determined
53 that the structure or property has ceased to be used for the industrial
54 or commercial purposes justifying the issuance of the certificate of
55 eligibility.

1 § 11-254 Extension of time for completion. Where an applicant has
2 received a certificate of eligibility but has not completed or will not
3 be able to complete the construction or reconstruction work within thir-
4 ty-six months, the board shall, upon application, extend to forty-eight
5 months, from the time of issuance of such certificate, the time for
6 completion of the construction or reconstruction work; provided the
7 applicant has completed not less than two-thirds of the work as speci-
8 fied in the certified plans previously filed with the application at the
9 time of such application for extension.

10 § 11-255 Prior certificates of eligibility. Any project for which a
11 certificate of eligibility has been approved by the board prior to the
12 enactment of this section shall be eligible for a tax exemption computed
13 according to the tax exemption tables and formulae in effect on the date
14 of such approval.

15 PART 4
16 TAX EXEMPTION AND DEFERRAL OF TAX
17 PAYMENT FOR CERTAIN
18 INDUSTRIAL AND COMMERCIAL PROPERTIES

19 § 11-256 Definitions. When used in this part:

20 a. "Applicant" means any person obligated to pay real property taxes
21 on the property for which an exemption from or abatement or deferral of
22 real property tax payments is sought, or in the case of exempt property,
23 the record owner or lessee thereof.

24 b. "Approved plans" means plans submitted to and approved by the
25 department of buildings in connection with the applicant's building
26 permit, including any amendments to such plans approved by such depart-
27 ment before final inspection of the work for which such permit was
28 issued.

29 c. "Benefit period" means the period of time when a recipient is
30 eligible to receive benefits pursuant to this part including in the case
31 of a recipient of a certificate of eligibility for commercial
32 construction work in a deferral area, the period of time when tax
33 payments are to be deferred, the interim period when no tax payments are
34 to be deferred and no deferred tax payments are required to be made, and
35 the period of time when the deferred tax payments are to be made.

36 d. "Commission" means the temporary commercial incentive area boundary
37 commission.

38 e. "Commercial construction work" means the construction of a new
39 building or structure, or portion thereof, or the modernization, reha-
40 bilitation, expansion, or other improvement of an existing building or
41 structure, or portion thereof, for use as commercial property.

42 f. "Commercial property" means nonresidential property: (1) on which
43 will exist after completion of commercial construction work, a building
44 or structure used for the buying, selling or otherwise providing of
45 goods or services including hotel services, or for other lawful busi-
46 ness, commercial or manufacturing activities; and (2) (a) where, except
47 as provided in subparagraph (b) of this paragraph and paragraph (3) of
48 this subdivision, not more than fifteen per centum of the total net
49 square footage of any building or structure on such property was used
50 for manufacturing activities at any one or more times during the twen-
51 ty-four months immediately preceding the date of application for a
52 certificate of eligibility or (b) where not more than fifteen per centum
53 of the total net square footage of any building or structure on such
54 property was used for manufacturing activities at any one or more times

1 during the sixty months immediately preceding the date of application
2 for a certificate of eligibility if such property is located, in whole
3 or in part, in the area in the borough of Manhattan lying south of the
4 center line of 96th Street; and (3) in the commercial revitalization
5 area, and with respect to an application for a certificate of eligibil-
6 ity filed on or after July first, two thousand, "commercial property"
7 means nonresidential property on which will exist after completion of
8 commercial construction work, a building or structure used for the
9 buying, selling or otherwise providing of goods or services including
10 hotel services, or for other lawful business, commercial or manufactur-
11 ing activities.

12 f-1. "Commercial revitalization area" means any district that is zoned
13 C4, C5, C6, M1, M2 or M3 in accordance with the zoning resolution in any
14 area of the city.

15 g. "Deferral area" means an area in which deferral of payment of real
16 property taxes in accordance with section 11-257 of this part shall be
17 available to a recipient who has performed commercial construction work.

18 h. "Excluded area" means each area specified in paragraphs (1), (2)
19 and (3) of subdivision d of section 11-258 of this part.

20 i. "Exemption base". (1) For purposes of computing the exemption
21 pursuant to subdivision a, b, c or d of section 11-257 of this part,
22 "exemption base" shall mean, with respect to property that is the
23 subject of a certificate of eligibility with an effective date of June
24 thirtieth, nineteen hundred ninety-two or before: (a) for the first,
25 second and third taxable years following the effective date of a certif-
26 icate of eligibility, the assessed value of improvements made since the
27 effective date of such certificate which are attributable exclusively to
28 commercial or industrial construction work described in approved plans;
29 and (b) for all other years, the assessed value of such improvements
30 which have been made before the fourth taxable status date following the
31 effective date of such certificate.

32 (2) For purposes of computing the exemption pursuant to subdivision c,
33 d or e of section 11-257 of this part, "exemption base" shall mean, with
34 respect to property that is the subject of a certificate of eligibility
35 with an effective date of July first, nineteen hundred ninety-two or
36 after: (a) for the first through fifth taxable years following the
37 effective date of a certificate of eligibility, the assessed value of
38 improvements made since the effective date of such certificate which are
39 attributable exclusively to commercial or renovation construction work
40 described in approved plans; and (b) for all other years, the assessed
41 value of such improvements which have been made before the sixth taxable
42 status date following the effective date of such certificate.

43 (3) For purposes of computing the exemption pursuant to subdivision a
44 or b of section 11-257 of this part, "exemption base" shall mean, with
45 respect to property that is the subject of a certificate of eligibility
46 with an effective date of July first, nineteen hundred ninety-two or
47 after: (a) for the first through fifth taxable years following the
48 effective date of a certificate of eligibility, the assessed value of
49 improvements made since the effective date of such certificate which are
50 attributable exclusively to commercial or industrial construction work
51 described in approved plans plus any equalization increases or minus any
52 equalization decreases in the assessed value of the property so improved
53 (excluding the land) occurring subsequent to the effective date of such
54 certificate; and (b) for all other years, the assessed value of such
55 improvements made before the sixth taxable status date following the
56 effective date of such certificate plus any equalization increases or

1 minus any equalization decreases in the assessed value of the property
2 so improved (excluding the land) occurring subsequent to the effective
3 date of such certificate but before the fourteenth taxable status date
4 following the effective date of such certificate. For purposes of the
5 preceding sentence: no adjustment shall be made to the assessed value of
6 the improvements referred to in subparagraphs (a) and (b) of this para-
7 graph for any portion of an equalization increase or decrease which is
8 being phased in pursuant to section eighteen hundred five of the real
9 property tax law subsequent to the effective date of the certificate of
10 eligibility if such increase or decrease occurred prior to such effec-
11 tive date; with respect to any taxable year, an adjustment for an equal-
12 ization increase or decrease shall reflect only the portion of such
13 increase or decrease which is being phased in during such taxable year
14 or which was phased in during a prior taxable year; no adjustment for an
15 equalization decrease shall reduce the exemption base to an amount less
16 than the assessed value of the improvements referred to in subparagraphs
17 (a) and (b) of this paragraph, and, to the extent that any such decrease
18 would reduce the exemption base below such amount, such decrease shall
19 reduce the taxable portion of the assessed value; and no adjustment
20 shall be made for an equalization increase or decrease if the improve-
21 ments referred to in subparagraphs (a) and (b) of this paragraph do not
22 result in a physical increase in the assessed value of the property.

23 (4) Notwithstanding paragraph one of this subdivision, for purposes of
24 computing the exemption pursuant to subdivision a of section 11-257 of
25 this part, "exemption base" shall mean, with respect to industrial prop-
26 erty that is located in the area in Staten Island; and that is the
27 subject of a certificate of eligibility with an effective date after
28 December thirty-first, nineteen hundred eighty-nine and before July
29 first, nineteen hundred ninety-two: (a) for the first, second and third
30 taxable years following the effective date of a certificate of eligibil-
31 ity, the assessed value of improvements made since the effective date of
32 such certificate which are attributable exclusively to industrial
33 construction work described in approved plans; and (b) for all other
34 years, the assessed value of such improvements made before the fourth
35 taxable status date following the effective date of such certificate
36 plus any equalization increases or minus any equalization decreases in
37 the assessed value of the property so improved (excluding the land)
38 occurring subsequent to the fourth taxable status date following the
39 effective date of such certificate but before the fourteenth taxable
40 status date following the effective date of such certificate. For
41 purposes of the preceding sentence: no adjustment shall be made to the
42 assessed value of the improvements referred to in subparagraphs (a) and
43 (b) of this paragraph for any portion of an equalization increase or
44 decrease which is being phased in pursuant to section eighteen hundred
45 five of the real property tax law subsequent to the effective date of
46 the certificate of eligibility if such increase or decrease occurred
47 prior to such effective date; with respect to any taxable year, an
48 adjustment for an equalization increase or decrease shall reflect only
49 the portion of such increase or decrease which is being phased in during
50 such taxable year or which was phased in during a prior taxable year; no
51 adjustment for an equalization decrease shall reduce the exemption base
52 to an amount less than the assessed value of the improvements referred
53 to in subparagraphs (a) and (b) of this paragraph, and, to the extent
54 that any such decrease would reduce the exemption base below such
55 amount, such decrease shall reduce the taxable portion of the assessed
56 value; and no adjustment shall be made for an equalization increase or

1 decrease if the improvements referred to in subparagraphs (a) and (b) of
2 this paragraph do not result in a physical increase in the assessed
3 value of the property.

4 (5) For purposes of computing the exemption: (a) pursuant to subdivi-
5 sion e.1 of section 11-257 of this part, "exemption base" shall mean,
6 with respect to property that is the subject of a certificate of eligi-
7 bility with an effective date of July first, nineteen hundred ninety-
8 five or after and that is located in the new construction exemption area
9 specified in paragraph one of subdivision e of section 11-258 of this
10 part: for any taxable year following the effective date of a certificate
11 of eligibility, the assessed value of improvements made since the effec-
12 tive date of such certificate which are attributable exclusively to the
13 construction of a new building or structure that meets the requirements
14 set forth in subdivision i of section 11-259 of this part as described
15 in approved plans, provided such improvements are made within thirty-six
16 months of the effective date of such certificate or by December thirty-
17 first, nineteen hundred ninety-nine, whichever is earlier; and (b)
18 pursuant to subdivision e.1 of section 11-257 of this part, "exemption
19 base" shall mean, with respect to property that is the subject of a
20 certificate of eligibility with an effective date of July first, nine-
21 teen hundred ninety-five or after and that is located in the new
22 construction exemption area specified in paragraph two of subdivision e
23 of section 11-258 of this part: for any taxable year following the
24 effective date of a certificate of eligibility, the assessed value of
25 improvements made since the effective date of such certificate which are
26 attributable exclusively to the construction of a new building or struc-
27 ture that meets the requirements set forth in subdivision i of section
28 11-259 of this part as described in approved plans, provided such
29 improvements are made within forty-two months of the effective date of
30 such certificate.

31 (6) For purposes of this subdivision "equalization increase or
32 decrease" means an increase or decrease in the assessed value of proper-
33 ty which is not attributable to construction work, fire, demolition,
34 destruction or other change in the physical characteristics of the prop-
35 erty (excluding gradual physical deterioration or obsolescence), or to a
36 change in the description or boundaries of the property.

37 j. "Industrial construction work" means the construction of a new
38 building or structure or the modernization, rehabilitation, expansion or
39 improvement of an existing building or structure for use as industrial
40 property.

41 k. "Industrial property" means nonresidential property on which will
42 exist after completion of industrial construction work a building or
43 structure wherein at least seventy-five per centum of the total net
44 square footage is used or immediately available and held out for use for
45 manufacturing activities involving the assembly of goods or the fabri-
46 cation or processing of raw materials.

47 l. "Initial assessed value" means the lesser of: (1) the taxable
48 assessed value of real property appearing on the books of the annual
49 record of the assessed valuation of real property on the effective date
50 of a recipient's certificate of eligibility; or (2) the assessed value
51 to which such assessment is thereafter reduced pursuant to application
52 to the tax commission or court order. Where the real property is used
53 for both residential and nonresidential purposes on the effective date
54 of such certificate of eligibility, the initial assessed value of such
55 real property, determined as provided in the preceding sentence, shall
56 be apportioned between the residential and nonresidential portions ther-

1 eof in such manner as shall properly reflect the initial assessed value
2 of each such portion. Such apportionment shall be in accordance with
3 rules promulgated by the department of finance.

4 m. "Manufacturing activity" means an activity involving the assembly
5 of goods or the fabrication or processing of raw materials.

6 n. "Minimum required expenditure" means expenditure for commercial,
7 renovation or industrial construction work in an amount equal to twenty
8 per centum of the initial assessed value; provided, however, that with
9 respect to a recipient who filed an application on or after July first,
10 nineteen hundred ninety-five for a certificate of eligibility for indus-
11 trial construction work or for commercial construction work in a special
12 exemption area or a regular exemption area, minimum required expenditure
13 means expenditure for such work in an amount equal to ten per centum of
14 the initial assessed value; provided, however, that with respect to a
15 recipient who filed an application on or after July first, nineteen
16 hundred ninety-five for a certificate of eligibility for industrial
17 construction work and for the purpose of receiving an abatement of real
18 property taxes in accordance with paragraph (3) of subdivision a of
19 section 11-257 of this part, minimum required expenditure means expendi-
20 ture for such work in an amount equal to twenty-five per centum of the
21 initial assessed value; and provided further that if the department of
22 finance, after consultation with the deputy mayor for finance and
23 economic development, determines that a greater expenditure is required
24 to encourage significant industrial and commercial development it may
25 establish by rule a higher percentage of initial assessed value, not to
26 exceed fifty per centum thereof, as the minimum required expenditure.
27 Expenditure for residential construction work shall not be included in
28 the minimum required expenditure; provided, however, that for mixed-use
29 property, expenditures for construction work related to the common areas
30 and systems of such property shall be allocated, in accordance with
31 rules promulgated by the department of finance, between the residential
32 and nonresidential portions of the property. If real property was used
33 for both residential and nonresidential purposes on the effective date
34 of the certificate of eligibility, the initial assessed value of such
35 real property, for purposes of this subdivision, shall be the initial
36 assessed value apportioned to the nonresidential portions thereof.

37 o. "Person" means an individual, corporation, partnership, associ-
38 ation, agency, trust, estate, foreign or domestic government or subdivi-
39 sion thereof, or other entity.

40 p. "Recipient" means an applicant to whom a certificate of eligibility
41 has been issued pursuant to this part, or the successor in interest of
42 such applicant, provided that where a person who has entered into a
43 lease or purchase agreement with the owner or lessee of exempt property
44 has been a co-applicant, such person or the successor in interest of
45 such person shall be the recipient.

46 q. "Regular exemption area" means an area in which a regular exemption
47 from taxes in accordance with section 11-257 of this part shall be
48 available to a recipient who performs commercial construction work.

49 r. "Residential construction work" means any construction, moderniza-
50 tion, rehabilitation, expansion or improvement of dwelling units other
51 than dwelling units in a hotel.

52 s. "Residential property" means property, other than property used for
53 hotel purposes, on which exists, or will exist upon completion of
54 construction work, a building or structure used for residential
55 purposes.

t. "Restricted activity" means any entertainment activity which the department of finance has identified in regulations promulgated pursuant to this part as an activity which, in the public interest, should not be encouraged through the benefits of this part.

u. "Special exemption area" means an area in which the commission has determined that a special exemption from real property taxes in accordance with subdivision b of section 11-257 of this part shall be available to a recipient who performs commercial construction work and, in addition, means the area specified in paragraph four of subdivision c of section 11-258 of this part.

v. "Mixed-use property" means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.

w. "Renovation construction work" means the modernization, rehabilitation, expansion or improvement of an existing building or structure, or portion thereof, for use as commercial property in a renovation exemption area where such modernization, rehabilitation, expansion or improvement is physically and functionally integrated with the existing building or structure, or portion thereof, does not increase the bulk of the existing building or structure by more than thirty per centum and does not increase the height of the existing building or structure by more than thirty per centum.

x. "Renovation exemption area" means the area specified in paragraph (4) of subdivision d of section 11-258 of this part in which a renovation exemption from taxes in accordance with subdivision e of section 11-257 of this part shall be available to a recipient who performs renovation construction work.

y. "New construction exemption areas" means the areas specified in subdivision e of section 11-258 of this part in which an exemption from real property taxes in accordance with subdivision e.1 of section 11-257 of this part shall be available to a recipient who constructs a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part.

§ 11-257 Real property tax exemption; deferral of tax payments. The city shall be divided into six classes of areas as provided in this part and pursuant to designation of areas to be made by the temporary commercial incentive area boundary commission. Within such areas, the following benefits shall be available to qualified recipients:

a. (1) A recipient who, following the effective date of a certificate of eligibility, has performed industrial construction work in any area of the city shall be eligible for an exemption from real property taxes as follows: For the first thirteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the fourteenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for industrial construction work:

50	Tax year following effective	
51	date of certificate	
52	of eligibility:	Amount of exemption:
53	1 through 13	Tax on 100% of exemption base
54	14	Tax on 90% of exemption base
55	15	Tax on 80% of exemption base

1	16	.....	Tax on 70% of exemption base
2	17	.....	Tax on 60% of exemption base
3	18	.....	Tax on 50% of exemption base
4	19	.....	Tax on 40% of exemption base
5	20	.....	Tax on 30% of exemption base
6	21	.....	Tax on 20% of exemption base
7	22	.....	Tax on 10% of exemption base

8 (2) Notwithstanding paragraph one of this subdivision, a recipient who
9 filed an application for a certificate of eligibility for industrial
10 construction work in any area of such city on or after July first, nine-
11 teen hundred ninety-five, and who, following the effective date of such
12 certificate of eligibility, has performed such industrial construction
13 work shall be eligible for an exemption from real property taxes as
14 follows: for the first sixteen tax years, the recipient shall be exempt
15 from taxation on one hundred per centum of the exemption base. For the
16 following nine tax years, the recipient shall be exempt from taxation on
17 a percentage of the exemption base beginning at ninety per centum there-
18 of in the seventeenth tax year and decreasing by ten per centum of said
19 exemption base each year.

20 The following table shall illustrate the computation of the exemption
21 for industrial construction work pursuant to this paragraph:

22	Tax year following effective		
23	date of certificate of		
24	eligibility:		
			Amount of exemption:
25	1 through 16.....		Tax on 100% of exemption base
26	17		Tax on 90% of exemption base
27	18		Tax on 80% of exemption base
28	19		Tax on 70% of exemption base
29	20		Tax on 60% of exemption base
30	21		Tax on 50% of exemption base
31	22		Tax on 40% of exemption base
32	23		Tax on 30% of exemption base
33	24		Tax on 20% of exemption base
34	25		Tax on 10% of exemption base

35 (3)(a) A recipient who filed an application for a certificate of
36 eligibility for industrial construction work in any area of such city on
37 or after July first, nineteen hundred ninety-five, and who, following
38 the effective date of such certificate of eligibility, both commenced
39 and completed such work, shall be eligible for an abatement of real
40 property taxes as follows: for the first tax year immediately following
41 completion of such work, and for the second, third and fourth tax years
42 following completion of such work, the abatement shall equal fifty per
43 centum of the real property tax that was imposed on the property which
44 is the subject of the certificate of eligibility for the tax year imme-
45 diately preceding the effective date of such certificate of eligibility,
46 provided, however, that if such property was fully or partially exempt
47 from real property taxes during such tax year, then the abatement shall
48 equal fifty per centum of the real property tax that would have been
49 imposed on such property but for such full or partial exemption. For the
50 fifth and sixth tax years, the abatement shall equal forty per centum of
51 such amount; for the seventh and eighth tax years, the abatement shall
52 equal thirty per centum of such amount; for the ninth and tenth tax
53 years, the abatement shall equal twenty per centum of such amount; and

1 for the eleventh and twelfth tax years, the abatement shall equal ten
 2 per centum of such amount. Notwithstanding any inconsistent provision of
 3 this paragraph, a recipient shall not be eligible for an abatement for
 4 the first tax year following completion of such work, unless the recipi-
 5 ent submits proof satisfactory to the department of finance that such
 6 work was completed on or before the taxable status date for such first
 7 tax year no later than thirty days after such taxable status date. Where
 8 the recipient fails to submit such proof in accordance with the forego-
 9 ing sentence, a recipient shall not be eligible for an abatement until
 10 the second tax year following completion of such work. In such case, a
 11 recipient shall submit proof satisfactory to the department of finance
 12 that such work was completed on or before the taxable status date for
 13 such first tax year no later than thirty days after the taxable status
 14 date for such second tax year. A recipient whose abatement begins in the
 15 second tax year following completion of such work shall not thereby have
 16 his or her twelve-year benefit period shortened.

17 The following table shall illustrate the computation of the abatement
 18 for industrial construction work pursuant to this paragraph:

19 Tax year following completion	Amount of abatement:
20 of industrial construction	
21 work:	
22 1	50%
23 2	50%
24 3	50%
25 4	50%
26 5	40%
27 6	40%
28 7	30%
29 8	30%
30 9	20%
31 10	20%
32 11	10%
33 12	10%

34 (b) If, due to a determination of the department of finance or tax
 35 commission of such city or a court, the real property tax imposed on
 36 such property for the tax year immediately preceding the effective date
 37 of such certificate of eligibility is changed, then any abatement that
 38 was granted in accordance with this paragraph prior to such reduction
 39 shall be recalculated and any abatement to be granted in accordance with
 40 this paragraph shall be based on the real property tax imposed on such
 41 property for the tax year immediately preceding the effective date of
 42 such certificate of eligibility, as changed by such determination. The
 43 amount equal to the difference between the abatement originally granted
 44 and the abatement as so recalculated shall be deducted from any refund
 45 otherwise payable or remission otherwise due as a result of a change due
 46 to such determination, and any balance of such amount remaining unpaid
 47 after making any such deduction shall be paid to the department of
 48 finance within thirty days from the date of mailing by the department of
 49 finance of a notice of the amount payable. Such amount payable shall
 50 constitute a tax lien on such property as of the date of such notice
 51 and, if not paid within such thirty-day period, penalty and interest at
 52 the rate applicable to delinquent taxes on such property shall be
 53 charged and collected on such amount from the date of such notice to the
 54 date of payment.

1 (c) No property which is the subject of a certificate of eligibility
2 pursuant to this part shall receive more than one abatement pursuant to
3 this part and no abatement shall exceed one consecutive twelve-year
4 period as specified in subparagraph (a) of this paragraph.

5 (d) In no event shall an abatement granted pursuant to this part
6 exceed in any tax year the real property taxes imposed on the property
7 which is the subject of a certificate of eligibility pursuant to this
8 part.

9 (e) For the purpose of calculating an abatement of real property taxes
10 pursuant to this part, where a tax lot contains more than one building
11 or structure and not all of the buildings or structures comprising such
12 tax lot are the subject of a certificate of eligibility for industrial
13 construction work pursuant to this part, the real property taxes imposed
14 on such tax lot for the year immediately preceding the effective date of
15 such certificate of eligibility shall be apportioned among the build-
16 ings, structures and land comprising such tax lot and only such real
17 property taxes as are allocable to the property which is the subject of
18 the certificate of eligibility pursuant to this part shall be abated in
19 accordance with this paragraph. Such apportionment shall be in accord-
20 ance with rules promulgated by the department of finance.

21 (f) A recipient who filed an application for a certificate of eligi-
22 bility for industrial construction work in the commercial revitalization
23 area on or after July first, two thousand, and who, following the effec-
24 tive date of such certificate of eligibility, both commenced and
25 completed such work, shall be eligible for an abatement of real property
26 taxes in accordance with subparagraph (a) of this paragraph, provided,
27 however, that where the total net square footage of the industrial prop-
28 erty used or immediately available and held out for use for manufactur-
29 ing activities involving the assembly of goods or the fabrication or
30 processing of raw materials is less than seventy-five per centum of the
31 total net square footage of the industrial property, the abatement of
32 real property taxes shall be determined in accordance with rules promul-
33 gated by the department of finance. Notwithstanding the foregoing
34 sentence, no such abatement shall be allowed where the total net square
35 footage of the industrial property used or immediately available and
36 held out for use for such manufacturing activities after completion of
37 industrial construction work is less than the total net square footage
38 used or immediately available and held out for use for such manufactur-
39 ing activities before the commencement of such construction work. For
40 purposes of this subparagraph only, the term "industrial construction
41 work" shall mean the modernization, rehabilitation, expansion or
42 improvement of an existing building or structure for use as industrial
43 property and the term "industrial property" shall mean nonresidential
44 property on which will exist after completion of industrial construction
45 work a building or structure wherein at least twenty-five per centum of
46 the total net square footage is used or immediately available and held
47 out for use for manufacturing activities involving the assembly of goods
48 or the fabrication or processing of raw materials.

49 b. (1) A recipient who, following the effective date of a certificate
50 of eligibility, has performed commercial construction work in a special
51 exemption area shall be eligible for an exemption from real property
52 taxes as follows: For the first thirteen tax years, the recipient shall
53 be exempt from taxation on one hundred per centum of the exemption base.
54 For the following nine tax years, the recipient shall be exempt from
55 taxation on a percentage of the exemption base beginning at ninety per

1 centum thereof in the fourteenth tax year and decreasing by ten per
2 centum of said exemption base each year.

3 The following table shall illustrate the computation of the exemption
4 for commercial construction work in a special exemption area:

	Tax year following effective date of certificate of eligibility:	Amount of exemption:
5	1 through 13	Tax on 100% of exemption base
6	14	Tax on 90% of exemption base
7	15	Tax on 80% of exemption base
8	16	Tax on 70% of exemption base
9	17	Tax on 60% of exemption base
10	18	Tax on 50% of exemption base
11	19	Tax on 40% of exemption base
12	20	Tax on 30% of exemption base
13	21	Tax on 20% of exemption base
14	22	Tax on 10% of exemption base

18 (2) Notwithstanding paragraph one of this subdivision, a recipient who
19 filed an application for a certificate of eligibility for commercial
20 construction work in a special exemption area on or after July first,
21 nineteen hundred ninety-five, and who, following the effective date of
22 such certificate of eligibility, has performed such commercial
23 construction work shall be eligible for an exemption from real property
24 taxes as follows: For the first sixteen tax years, the recipient shall
25 be exempt from taxation on one hundred per centum of the exemption base.
26 For the following nine tax years, the recipient shall be exempt from
27 taxation on a percentage of the exemption base beginning at ninety per
28 centum thereof in the seventeenth tax year and decreasing by ten per
29 centum of said exemption base each year.

30 The following table shall illustrate the computation of the exemption
31 for commercial construction work in a special exemption area pursuant to
32 this paragraph:

	Tax year following effective date of certificate of eligibility:	Amount of exemption:
33	1 through 16	Tax on 100% of exemption base
34	17	Tax on 90% of exemption base
35	18	Tax on 80% of exemption base
36	19	Tax on 70% of exemption base
37	20	Tax on 60% of exemption base
38	21	Tax on 50% of exemption base
39	22	Tax on 40% of exemption base
40	23	Tax on 30% of exemption base
41	24	Tax on 20% on exemption base
42	25	Tax on 10% of exemption base

46 c. (1) A recipient who, following the effective date of a certificate
47 of eligibility, has performed commercial construction work in a regular
48 exemption area shall be eligible for an exemption from real property
49 taxes as follows: For the first eight tax years, the recipient shall be
50 exempt from taxation on one hundred per centum of the exemption base.
51 For the following four tax years, the recipient shall be exempt from
52 taxation on a percentage of the exemption base beginning at eighty per

1 centum thereof in the ninth tax year and decreasing by twenty per centum
 2 of said exemption base each year.
 3 The following table shall illustrate the computation of the exemption
 4 for commercial construction work in a regular exemption area:

	Tax year following effective date of certificate of eligibility:	Amount of exemption:
8	1 through 8	Tax on 100% of exemption base
9	9	Tax on 80% of exemption base
10	10	Tax on 60% of exemption base
11	11	Tax on 40% of exemption base
12	12	Tax on 20% of exemption base

13 (2) Notwithstanding paragraph one of this subdivision, a recipient who
 14 filed an application for a certificate of eligibility for commercial
 15 construction work in a regular exemption area on or after July first,
 16 nineteen hundred ninety-five, and who, following the effective date of
 17 such certificate of eligibility, has performed such commercial
 18 construction work shall be eligible for an exemption from real property
 19 taxes as follows: For the first eleven tax years, the recipient shall be
 20 exempt from taxation on one hundred per centum of the exemption base.
 21 For the following four tax years, the recipient shall be exempt from
 22 taxation on a percentage of the exemption base beginning at eighty per
 23 centum thereof in the twelfth tax year and decreasing by twenty per
 24 centum of said exemption base each year.

25 The following table shall illustrate the computation of the exemption
 26 for commercial construction work in a regular exemption area pursuant to
 27 this paragraph:

	Tax year following effective date of certificate of eligibility:	Amount of exemption:
31	1 through 11	Tax on 100% of exemption base
32	12	Tax on 80% of exemption base
33	13	Tax on 60% of exemption base
34	14	Tax on 40% of exemption base
35	15	Tax on 20% of exemption base

36 d. Except as provided in paragraphs two and three of subdivision d of
 37 section 11-258 of this part, a recipient who, following the effective
 38 date of a certificate of eligibility, has performed commercial
 39 construction work in a deferral area shall be eligible for a deferral of
 40 tax payments as follows: For the first three tax years following the
 41 effective date of a certificate of eligibility, the tax payment on one
 42 hundred per centum of the exemption base shall be deferred. For the
 43 following four tax years, the tax payment on a percentage of the
 44 exemption base beginning at eighty per centum thereof in the fourth tax
 45 year and decreasing by twenty per centum each year shall be deferred.
 46 The total amount of tax payments deferred pursuant to this part shall be
 47 paid subsequently over the course of ten tax years as follows: Commenc-
 48 ing in the eleventh tax year following the effective date of the certif-
 49 icate of eligibility, through and including the twentieth tax year
 50 following such effective date, an amount equal to ten per centum of the
 51 total amount of tax payments deferred pursuant to this section shall be

1 added to the amount of tax otherwise assessed and payable in each such
 2 tax year on the property subject to such deferral.
 3 The following table shall illustrate the computation of deferral and
 4 payment of taxes for commercial construction work in a deferral area:

5 Tax year following	
6 effective date of	
7 certificate of	
8 eligibility:	Amount of tax payments to be deferred or paid:
9 1 through 3	Deferral of tax payment on 100% of the exemption base
10 4	Deferral of tax payment on 80% of the exemption base
11 5	Deferral of tax payment on 60% of the exemption base
12 6	Deferral of tax payment on 40% of the exemption base
13 7	Deferral of tax payment on 20% of the exemption base
14 8 through 10	No tax payments are to be deferred and no deferred
15	tax payments are required to be made
16 11 through 20	Payment each year of 10% of total dollar amount of
17	tax payments deferred pursuant to this part

18 e. A recipient who, following the effective date of a certificate of
 19 eligibility, has performed renovation construction work in a renovation
 20 exemption area shall be eligible for an exemption from real property
 21 taxes as follows: For the first eight tax years, the recipient shall be
 22 exempt from taxation on one hundred per centum of the exemption base.
 23 For the following four tax years, the recipient shall be exempt from
 24 taxation on a percentage of the exemption base beginning at eighty per
 25 centum thereof in the ninth tax year and decreasing by twenty per centum
 26 of said exemption base each year.

27 The following table shall illustrate the computation of the exemption
 28 for renovation construction work in a renovation exemption area:

29 Tax year following effective	
30 date of certificate	
31 of eligibility:	Amount of exemption:
32 1 through 8	Tax on 100% of exemption base
33 9	Tax on 80% of exemption base
34 10	Tax on 60% of exemption base
35 11	Tax on 40% of exemption base
36 12	Tax on 20% of exemption base

37 e.1. A recipient who, following the effective date of a certificate of
 38 eligibility, constructs a new building or structure that meets the
 39 requirements set forth in subdivision i of section 11-259 of this part
 40 in the new construction exemption area specified in paragraph one, two
 41 or three of subdivision e of section 11-258 of this part shall be eligi-
 42 ble for an exemption from real property taxes as follows: for the first
 43 four tax years, the recipient shall be exempt from taxation on one
 44 hundred per centum of the exemption base. For the following four tax
 45 years, the recipient shall be exempt from taxation on a percentage of
 46 the exemption base beginning at eighty per centum thereof in the fifth
 47 tax year and decreasing by twenty per centum of said exemption base each
 48 year.

49 The following table shall illustrate the computation of the exemption
 50 for the construction of a new building or structure that meets the
 51 requirements set forth in subdivision i of section 11-259 of this part

1 in the new construction exemption area specified in paragraph one, two
2 or three of subdivision e of section 11-258 of this part:

3	Tax year following effective	
4	date of certificate	
5	of eligibility:	Amount of exemption:
6	1 through 4	Tax on 100% of exemption base
7	5	Tax on 80% of exemption base
8	6	Tax on 60% of exemption base
9	7	Tax on 40% of exemption base
10	8	Tax on 20% of exemption base

11 f. There shall be no exemption from or deferral of payment of real
12 property taxes available pursuant to this part to any person who
13 performs commercial or renovation construction work in an excluded area.

14 g. The benefits of this part shall be granted exclusively for indus-
15 trial, commercial or renovation construction work described in approved
16 plans. No benefits shall be granted for residential construction work.
17 Any parcel which is partly located in an excluded area shall be deemed
18 to be entirely located in such area.

19 h. No benefits pursuant to this part shall be granted for work which
20 is the subject of a certificate of eligibility issued pursuant to part
21 three of this subchapter.

22 § 11-258 Temporary commercial incentive area boundary commission;
23 classes of area; excluded areas. a. There shall be a temporary commer-
24 cial incentive area boundary commission to consist of the deputy mayor
25 for economic development and planning, the commissioner of finance, the
26 chair of the city planning commission, the director of management and
27 budget, the borough presidents, the speaker of the city council and a
28 public member appointed by the mayor to serve at the mayor's pleasure.
29 Each member except the public member shall have the power to designate
30 an alternate to represent him or her at commission meetings to exercise
31 all the rights and powers of such member, including the right to vote,
32 provided that such designation be made in writing to the chair of the
33 commission. The deputy mayor for economic development and planning shall
34 be the chair of the commission. Each borough president shall be entitled
35 to vote only on the designation of areas within his or her borough.
36 Commission members who shall be officers or employees of the city shall
37 serve without compensation but shall be reimbursed for expenses neces-
38 sarily incurred in the performance of their duties. Any other commission
39 member shall receive as exclusive compensation for his or her services
40 one hundred dollars per diem, provided, however, that the total compen-
41 sation paid to any such member shall not exceed twelve hundred dollars
42 for any calendar year. A majority of members of such commission entitled
43 to vote on a matter shall constitute a quorum for such issue. Decisions
44 shall be made by majority vote of those present entitled to vote on a
45 matter.

46 b. (1) The commission shall meet in nineteen hundred ninety-two, nine-
47 teen hundred ninety-five and nineteen hundred ninety-nine to determine
48 the boundaries of the various areas which it is authorized to designate
49 pursuant to this section. The areas designated by the commission in
50 effect as of December thirty-first, nineteen hundred ninety-one shall
51 remain in effect until the first taxable status date after the city
52 council approves a new designation pursuant to paragraph four of this
53 subdivision.

1 (2) Not later than October first of each year when areas are to be
2 designated, the commission shall publish notice of proposed boundaries
3 of areas to be designated, and the date, not earlier than five nor later
4 than fifteen days following the publication of such notice, on which the
5 commission will hold a public hearing to hear all persons interested in
6 the designation of areas. The notice required by this paragraph shall be
7 published in the City Record and a newspaper of general circulation in
8 the city, and copies thereof shall be forwarded to each council member
9 and community board.

10 (3) The commission shall make such designation, and notify the city
11 council of such designation, not later than November first of each year
12 when areas are to be designated. The designation shall be effective as
13 provided in paragraph four of this subdivision.

14 (4) Within thirty days after the first stated meeting of the city
15 council following the receipt of notice of such designation, the city
16 council may, by majority vote, disapprove such designation. If, within
17 such thirty-day period, the city council fails to act or fails to act by
18 the required vote, the city council shall be deemed to have approved
19 such designation. Such designation shall be effective as of the first
20 taxable status date after the city council approves such designation and
21 shall remain in effect until the first taxable status date after the
22 city council approves a new designation pursuant to this paragraph.

23 c. (1) The commission may designate any area other than the area lying
24 south of the center line of ninety-sixth street in the borough of
25 Manhattan to be a special exemption area if it determines that market
26 conditions in the area are such that the availability of a special
27 exemption is required in order to encourage commercial construction work
28 in such area. In making such determination, the commission shall consid-
29 er, among other factors, the existence in such area of a special need
30 for commercial and job development, high unemployment, economic distress
31 or unusually large numbers of vacant, underutilized, unsuitable or
32 substandard structures, or other substandard, unsanitary, deteriorated
33 or deteriorating conditions, with or without tangible blight.

34 (2) Any area in the city, which the commission has not designated as a
35 special exemption area shall be a regular exemption area.

36 (3) On or after January first, nineteen hundred ninety-two, the
37 commission shall not designate any area to be either a deferral area or
38 an excluded area, nor shall the commission make any new designation in
39 any urban renewal area designated pursuant to article fifteen of the
40 general municipal law so as to reduce the level of benefits available
41 pursuant to this title in such area.

42 (4) Notwithstanding any other provision of this part, any area in the
43 city designated as an empire zone in accordance with article eighteen-b
44 of the general municipal law, which the commission has not designated as
45 a special exemption area, shall be a special exemption area as of July
46 first, nineteen hundred ninety-five or as of the date of the designation
47 of such area as an empire zone, whichever is later.

48 § 11-259 Eligibility for benefits. a. A recipient of a certificate of
49 eligibility with an effective date of June thirtieth, nineteen hundred
50 ninety-two or before must make one-half the minimum required expenditure
51 within eighteen months of the effective date of such recipient's certif-
52 icate of eligibility, and make the minimum required expenditure within
53 thirty-six months of the effective date of such certificate to be eligi-
54 ble to receive the benefits of this part. A recipient of a certificate
55 of eligibility with an effective date of July first, nineteen hundred
56 ninety-two or after must make one-half the minimum required expenditure

1 within thirty months of the effective date of such recipient's certifi-
2 cate of eligibility, and make the minimum required expenditure within
3 sixty months of the effective date of such certificate to be eligible to
4 receive the benefits of this part. Any recipient who shall fail to make
5 such expenditures shall become ineligible and shall pay, with interest,
6 any taxes for which an exemption or deferral was claimed pursuant to
7 this section. This subdivision shall not apply to the recipient of a
8 certificate of eligibility for construction of a new building or struc-
9 ture that meets the requirements set forth in subdivision i of section
10 11-259 of this part in a new construction exemption area.

11 b. No benefits pursuant to this part shall be granted for construction
12 work on any condominium unit unless such unit is in a building or struc-
13 ture which, if viewed as a whole and as if it were under single owner-
14 ship, would qualify as commercial or industrial property. The minimum
15 required expenditure applicable to any recipient of a certificate of
16 eligibility for construction work on a condominium unit shall be equal
17 to the minimum expenditure which would apply if a certificate of eligi-
18 bility were issued for construction work on the entire property where
19 such unit is located. Nothing in this subdivision shall be construed to
20 prevent owners of condominium units in the same property from forming an
21 association to be a recipient. This subdivision shall not apply to any
22 applicant whose property would be, or recipient whose property is, the
23 subject of a certificate of eligibility with an effective date of July
24 first, nineteen hundred ninety-two or after.

25 c. No benefits pursuant to this part shall be granted for any
26 construction work unless the applicant filed an application for such
27 benefits on or before the date of issuance of a building permit for such
28 work. The requirements of this subdivision may be satisfied where the
29 applicant's architect, contractor or other representative authorized to
30 file the application for such building permit files with the department
31 of finance on behalf of the applicant a preliminary application contain-
32 ing such information as the department of finance shall prescribe by
33 regulation.

34 d. No benefits pursuant to this part shall be granted to any recipient
35 for construction work on property any part of which is to be used for a
36 restricted activity.

37 e. No benefits pursuant to this part shall be granted for any
38 construction work unless the applicant shall file, together with the
39 application, an affidavit setting forth the following information:

40 (1) a statement that within the seven years immediately preceding the
41 date of application for a certificate of eligibility, neither the appli-
42 cant, nor any person owning a substantial interest in the property as
43 defined in paragraph four of this subdivision, nor any officer, director
44 or general partner of the applicant or such person was finally adjudi-
45 cated by a court of competent jurisdiction to have violated section two
46 hundred thirty-five of the real property law or any section of article
47 one hundred fifty of the penal law or any similar arson law of another
48 state with respect to any building, or was an officer, director or
49 general partner of a person at the time such person was finally adjudi-
50 cated to have violated such law;

51 (2) a statement setting forth any pending charges alleging violation
52 of section two hundred thirty-five of the real property law or any
53 section of article one hundred fifty of the penal law or any similar
54 arson law of another jurisdiction with respect to any building by the
55 applicant or any person owning a substantial interest in the property as

1 defined in paragraph four of this subdivision, or any officer, director
2 or general partner of the applicant or such person; and

3 (3) a statement that the applicant has posted notice in a conspicuous
4 place at the premises which are the subject of the application and
5 published notice in a newspaper of general circulation in the city, in
6 such form as shall be prescribed by the department of finance, stating
7 that persons having information concerning any violation by the appli-
8 cant or a person having a substantial interest in the property as
9 defined in paragraph four of this subdivision has violated section two
10 hundred thirty-five of the real property law or any section of article
11 one hundred fifty of the penal law or any similar arson law of another
12 jurisdiction may submit such information to the department of finance to
13 be considered in determining the applicant's eligibility for benefits.

14 (4) "Substantial interest" as used in this subdivision shall mean
15 ownership and control of an interest of ten per centum or more in a
16 property or of any person owning a property.

17 f. If any person described in the statement required by paragraph two
18 of subdivision e of this section is finally adjudicated by a court of
19 competent jurisdiction to be guilty of any charge listed in such state-
20 ment, the recipient shall cease to be eligible for benefits pursuant to
21 this part and shall pay with interest any taxes for which an exemption,
22 abatement or deferral was claimed pursuant to this part.

23 g. In addition to any other qualifications for exemption from or
24 abatement or deferral of payment of taxes set forth in this part, an
25 applicant must be:

26 (1) obligated to pay real property tax on the property for which an
27 exemption, abatement or deferral is sought, whether such obligation
28 arises because of record ownership of such property, or because the
29 obligation to pay such tax has been assumed by contract; or

30 (2) the record owner or lessee of property which is exempt from real
31 property taxation who has entered into an agreement to sell or lease
32 such property to another person. Such person shall be a co-applicant
33 with such owner or lessee.

34 h. A co-applicant with a public entity shall be an eligible recipient
35 pursuant to this part, provided that for such period as the property
36 which is the subject of the certificate of eligibility is exempt from
37 real property taxation because it is owned or controlled by a public
38 entity no benefits shall be available to such recipient pursuant to this
39 part. Such recipient shall receive benefits pursuant to this part when
40 such property ceases to be eligible for exemption pursuant to other
41 provisions of law, as follows: the recipient shall, commencing with the
42 date such tax exemption ceases, and continuing until the expiration of
43 the benefit period pursuant to this part, receive the benefits to which
44 such recipient is entitled in the corresponding tax year pursuant to
45 this part.

46 i. (1) No benefits pursuant to this part shall be granted for
47 construction of a new building or structure in a new construction
48 exemption area unless such building or structure meets the requirements
49 set forth in subparagraphs two and three of this paragraph and, in addi-
50 tion, meets at least two of the five requirements set forth in subpara-
51 graphs four through eight of this paragraph.

52 (2) The height of at least fifty per centum of the floors in such
53 building or structure shall be not less than twelve feet, nine inches
54 measured from the top of the slab comprising the floor to the bottom of
55 the slab comprising the ceiling;

1 (3) Such building or structure shall be served by fiber optic telecom-
2 munications wiring and shall contain vertical penetrations for the
3 distribution of fiber optic cabling to individual tenants on each floor;

4 (4) The total square footage of such building or structure is not less
5 than five hundred thousand gross square feet;

6 (5) A minimum of two hundred thousand gross square feet or twenty-five
7 per centum of such building or structure is comprised of floors of not
8 less than forty thousand gross square feet;

9 (6) At least ten per centum of the gross square footage of such build-
10 ing or structure is comprised of floors that contain no more than eight
11 structural columns, excluding any columns within the core or on the
12 periphery of such building or structure;

13 (7) The electrical capacity of such building or structure is not less
14 than six watts per net square foot;

15 (8) Emergency backup power sufficient to accommodate a need of six
16 watts per net square foot is available in at least two hundred thousand
17 gross square feet or twenty-five per centum of such building or struc-
18 ture.

19 j. No benefits pursuant to this part shall be granted for construction
20 work performed pursuant to a building permit issued after July thirty-
21 first, two thousand eight, except that if a building permit is issued on
22 or before July thirty-first, two thousand eight for construction work on
23 a building or structure described in an application for a certificate of
24 eligibility filed on or before June thirtieth, two thousand eight,
25 construction work performed as described in such application pursuant to
26 any additional building permit issued on or after August first, two
27 thousand eight shall be eligible for benefits pursuant to this part in
28 accordance with this subdivision.

29 (1) Except as provided in paragraph two of this subdivision, all
30 construction work performed pursuant to any such application shall be
31 completed on or before December thirty-first, two thousand thirteen. No
32 benefits shall be granted for construction work performed after such
33 date, and any exemption granted pursuant to this part in relation to
34 property on which such construction work was performed shall not exceed
35 the amount of the exemption in effect for such property on the tax roll
36 for which the taxable status date is January fifth, two thousand four-
37 teen.

38 (2) All construction work performed pursuant to any such application
39 for the construction of a new building or structure in the new
40 construction exemption area specified in paragraph three of subdivision
41 e of section 11-258 of this part shall be completed in accordance with
42 paragraph four of subdivision i of this section and, if not completed in
43 accordance with such subparagraph, shall not be eligible for benefits
44 pursuant to this part.

45 (3) For purposes of this subdivision, construction work as described
46 in an application for a certificate of eligibility shall be deemed
47 completed on the date on which the department of buildings issues a
48 temporary or final certificate of occupancy or, if such construction
49 work does not require the issuance of a certificate of occupancy, the
50 date on which the applicant and the applicant's architect or profes-
51 sional engineer for such construction work submit to the department of
52 finance an affidavit certifying that such construction work has been
53 completed. For purposes of this subdivision, a demolition permit shall
54 be deemed to be a building permit issued for construction work.

55 § 11-260 Application for certificate of eligibility. a. Application
56 for a certificate of eligibility pursuant to this part may be made imme-

1 diately and continuing until June thirtieth, two thousand eight; and
2 provided, further, however, that no benefits pursuant to this part shall
3 be granted for construction work performed pursuant to a building permit
4 issued after July thirty-first, two thousand eight. Such application
5 shall state whether it is for industrial, commercial or renovation
6 construction work, and shall be filed with the department of finance. In
7 addition to any other information required by such department, the
8 application shall include cost estimates or bids for the proposed
9 construction and an affidavit of a professional engineer or architect of
10 the applicant's choice, certifying that detailed plans for the
11 construction work have been submitted to the department of buildings.
12 Such application shall also state that the applicant agrees to comply
13 with and be subject to the rules issued from time to time by the depart-
14 ment of finance to secure compliance with all applicable city, state and
15 federal laws or which implement mayoral directives and executive orders
16 designed to ensure equal employment opportunity. Such application shall
17 also certify that all taxes currently due and owing on the property
18 which is the subject of the application have been paid or are currently
19 being paid in timely installments pursuant to written agreement with the
20 department of finance.

21 b. The burden of proof shall be on the applicant to show by clear and
22 convincing evidence that the requirements for granting an exemption from
23 or abatement or deferral of payment of taxes pursuant to this part have
24 been satisfied. The department of finance shall have the authority to
25 require that statements in connection with the application be made under
26 oath.

27 c. Upon receipt of an application, the department of finance shall
28 send written notice thereof to the council member representing the
29 district where the proposed construction work is to take place.

30 d. The department of finance shall issue a certificate of eligibility
31 upon determining that the applicant satisfies the requirements for
32 industrial, commercial or renovation construction work in an area where
33 benefits are available for such work. Such certificate shall state
34 whether such benefits are to be granted for industrial, commercial or
35 renovation construction work, and in which class of area the property is
36 located. The effective date of such certificate, except as provided in
37 paragraph two or paragraph four of subdivision c of section 11-259 of
38 this part, shall be the earlier of (1) the date on which a building
39 permit for the construction work is issued by the department of build-
40 ings, or (2) the last day before the effective date of any designation
41 of boundaries by the commission which changes the class of area in which
42 the property is located so as to reduce the level of benefits for
43 commercial construction work on such property. Where the effective date
44 of the certificate of eligibility is July first, nineteen hundred nine-
45 ty-two or after, the benefits granted for industrial, commercial or
46 renovation construction work pursuant to this part shall be in accord-
47 ance with the provisions of this part. Where the effective date of the
48 certificate of eligibility is June thirtieth, nineteen hundred ninety-
49 two or before, the benefits granted for industrial or commercial
50 construction work pursuant to this part shall be in accordance with the
51 provisions of this part as it was in effect until June thirtieth, nine-
52 teen hundred ninety-two. No recipient whose property is the subject of
53 a certificate of eligibility for commercial construction work in a
54 deferral area shall be eligible to apply for a certificate of eligibil-
55 ity for renovation construction work on the same property, where the
56 renovation construction work is the same as, or similar to, the commer-

1 cial construction work for which the deferral area certificate was
2 issued, until three years after the effective date of the deferral area
3 certificate. No recipient shall receive a tax deferral and a tax
4 exemption for the same expenditure on eligible construction work.

5 e. A copy of the certificate of eligibility shall be filed by the
6 department of finance in the manner prescribed for recording a mortgage
7 pursuant to section two hundred ninety-one-d of the real property law.

8 f. The department of finance may provide by rule for reasonable admin-
9 istrative charges or fees necessary to defray expenses in administering
10 the benefit program provided by this part.

11 § 11-261 Reporting requirement; termination of benefits. a. Upon
12 approval by the department of buildings of the plans submitted in
13 connection with the building permit and any amendments to such plans,
14 the recipient shall file with the department of finance a narrative
15 description of such approved plans describing the industrial, commercial
16 or renovation construction work for which such recipient seeks benefits
17 pursuant to this part.

18 b. For the duration of the benefit period the recipient shall file
19 annually with the department of finance, on or before the taxable status
20 date, a certificate of continuing use stating the purposes for which the
21 property described in the certificate of eligibility is being used and
22 the net square footage allotted to each such purpose. Such certificate
23 of continuing use shall be on a form prescribed by the department of
24 finance and shall state the total number of workers employed on the
25 property and the number of such workers who are city residents. The
26 department of finance shall have authority to terminate benefits pursu-
27 ant to this part upon failure of a recipient to file such certificate by
28 the taxable status date. The burden of proof shall be on the recipient
29 to establish continuing eligibility for benefits and the department of
30 finance shall have the authority to require that statements made in such
31 certificate shall be made under oath.

32 c. A recipient shall file an amendment to the latest certificate of
33 continuing use prior to (1) converting square footage within property
34 which is the subject of a certificate of eligibility for industrial
35 construction work from use for the manufacturing activities described in
36 such certificate of continuing use where such conversion results in less
37 than sixty-five per centum of total net square footage being used or
38 held out for use for manufacturing activities; or (2) converting any
39 portion of property which is the subject of a certificate of eligibility
40 to use for any restricted activity or as residential property.

41 d. No later than eighteen months after the effective date of a certif-
42 icate of eligibility with an effective date of June thirtieth, nineteen
43 hundred ninety-two or before, the recipient shall present evidence to
44 the department of finance demonstrating that the recipient has made
45 one-half of the minimum required expenditure. Not later than thirty-six
46 months after the effective date of such certificate, such recipient
47 shall present evidence to such department demonstrating that the recipi-
48 ent has made the minimum required expenditure. Not later than thirty
49 months after the effective date of a certificate of eligibility with an
50 effective date of July first, nineteen hundred ninety-two or after, the
51 recipient shall present evidence to the department of finance demon-
52 strating that the recipient has made one-half of the minimum required
53 expenditure. Such evidence shall be presented in the form and manner
54 prescribed by such department. The burden of proof shall be on the
55 recipient to show by clear and convincing evidence that the required
56 expenditures have been made. This subdivision shall not apply to the

1 recipient of a certificate of eligibility for construction of a new
2 building or structure that meets the requirements set forth in subdivi-
3 sion i of section 11-259 of this part in a new construction exemption
4 area.

5 e. A recipient of a certificate of eligibility for construction of a
6 new building or structure in a new construction exemption area shall
7 present evidence to the department of finance demonstrating that the
8 requirements of subdivision i of section 11-259 of this part have been
9 met. Such evidence shall be presented in the form and manner and at the
10 time prescribed by such department. The burden of proof shall be on the
11 recipient to show by clear and convincing evidence that such require-
12 ments have been met.

13 § 11-262 Conversion of property. a. Any recipient whose property is
14 the subject of a certificate of eligibility for commercial or renovation
15 construction work, and who, prior to the expiration of the benefit peri-
16 od, uses such property as industrial property, shall continue to receive
17 benefits for commercial or renovation construction work as the case may
18 be.

19 b. Any recipient whose property is the subject of a certificate of
20 eligibility for industrial construction work, and who, prior to the
21 expiration of the benefit period, uses such property as commercial prop-
22 erty, shall cease to be eligible for further exemption or abatement for
23 industrial construction work as of the last date to which such recipient
24 proves by clear and convincing evidence that such property was used as
25 industrial property, and shall pay with interest any taxes for which an
26 exemption or abatement was claimed after such date, except that:

27 (1) a recipient of a certificate of eligibility for industrial
28 construction work in a special exemption area who would have been eligi-
29 ble to receive a certificate of eligibility for commercial construction
30 work at the time such recipient applied for benefits shall continue to
31 receive an exemption for industrial construction; and

32 (2) a recipient of a certificate of eligibility for industrial
33 construction work in a regular exemption area who would have been eligi-
34 ble to receive a certificate of eligibility for commercial construction
35 work at the time such recipient applied for benefits shall, commencing
36 with the date of conversion to commercial property and continuing until
37 the expiration of the benefit period for commercial construction work,
38 receive any exemption which such recipient would have received in the
39 corresponding tax year pursuant to a certificate of eligibility for
40 commercial construction work; and

41 (3) a recipient of a certificate of eligibility for industrial
42 construction work in any area of the city on whose property at least
43 sixty-five per centum of the net square footage continues to be used or
44 held out for use for manufacturing activities after conversion to
45 commercial property, shall not be required to pay the pro rata share of
46 tax for which an exemption was claimed during the tax year in which such
47 conversion occurred.

48 c. Except as provided in subdivision d of this section, any recipient
49 whose property is the subject of a certificate of eligibility for
50 commercial, industrial or renovation construction work, and who uses
51 such property as residential property or for any restricted activity
52 prior to the expiration of the benefit period, shall cease to be eligi-
53 ble for further exemption, abatement or deferral as of the date such
54 property was first used as residential property or for any restricted
55 activity. In the case of property in an area that was designated as an
56 exemption area at the time the certificate of eligibility was issued,

1 such recipient shall pay with interest any taxes for which an exemption
2 was claimed after such date, including the pro rata share of tax for
3 which any exemption was claimed during the tax year in which such use
4 occurred. In the case of industrial property, such recipient shall pay
5 with interest any taxes for which an exemption or abatement was claimed
6 after such date, including the pro rata share of tax for which any
7 exemption or abatement was claimed during the tax year in which such use
8 occurred. In the case of property in an area that was designated as a
9 deferral area at the time the certificate of eligibility was issued, all
10 deferred tax payments on the property shall become due and payable im-
11 mediately.

12 d. Notwithstanding subdivision c of this section, any recipient whose
13 property is the subject of a certificate of eligibility for commercial
14 or renovation construction work with an effective date of July first,
15 nineteen hundred ninety-two or after, and who, prior to the expiration
16 of the benefit period, uses a portion of such property as residential
17 property, shall cease to be eligible for further exemption for commer-
18 cial or renovation construction work for that portion of such property
19 used as residential property as of the date such portion of the property
20 was first used as residential property. Such recipient shall pay, with
21 interest, any taxes for which an exemption was claimed after such date
22 attributable to that portion of the property used as residential proper-
23 ty, including the pro rata share of tax for which such exemption was
24 claimed during the tax year in which such use occurred. Such recipient
25 shall continue to receive an exemption for commercial or renovation
26 construction work for that portion of the property which continues to be
27 used as commercial property.

28 § 11-263 Administration of the benefit program. The department of
29 finance shall have, in addition to any other functions, powers and
30 duties which have been or may be conferred on it by law, the following
31 functions, powers and duties:

32 (1) To publicize the availability of benefits pursuant to this part
33 for industrial, commercial and renovation construction work.

34 (2) To receive and review applications for certificates of eligibil-
35 ity, issue such certificates where authorized pursuant to section 11-260
36 of this part, and record the issuance of such certificates as prescribed
37 in such section.

38 (3) To receive evidence of expenditures made for construction, and
39 where such expenditures do not equal the amount required to qualify for
40 exemption from or abatement or deferral of tax payments to take appro-
41 priate action, including but not limited to denying, reducing, suspend-
42 ing, terminating or revoking benefits pursuant to this part.

43 (4) To enter and inspect property to determine whether it is indus-
44 trial or commercial or mixed-use and to determine whether (a) any such
45 property is being used for any restricted use, or (b) any property which
46 is the subject of a certificate of eligibility for industrial
47 construction work is being used as commercial property, or (c) any
48 industrial or commercial property is being used as residential or mixed-
49 use property, or (d) all or part of the nonresidential portion of mixed-
50 use property is being used as residential property.

51 (5) To collect all real property taxes for which payment is deferred
52 pursuant to this part.

53 (6) To collect all real property taxes, with interest, due and owing
54 as a result of reduction, suspension, termination or revocation of any
55 exemption from or abatement or deferral of taxes granted pursuant to
56 this part.

1 (7) To make and promulgate regulations to carry out the purposes of
2 this part including, but not limited to, regulations requiring appli-
3 cants to publish notice of their applications, defining manufacturing
4 and commercial activities and specifying the nature of work for which
5 expenses may be included in the minimum required expenditure, provided,
6 however, that any regulation increasing the minimum required expenditure
7 shall not apply to any person who is a recipient on the effective date
8 of such regulation. Such regulations shall include a requirement that
9 with respect to the construction work recipients and their contractors
10 shall be equal opportunity employers and shall also provide that persons
11 employed in the construction work shall implement a training program for
12 economically disadvantaged persons enrolled or eligible to be enrolled
13 in training programs approved by the department of labor, with partic-
14 ular reference to city residents.

15 § 11-264 Tax lien; interest rate. a. All taxes plus interest required
16 to be paid retroactively pursuant to this part shall constitute a tax
17 lien as of the date it is determined such taxes and interest are owed.
18 All interest shall be calculated from the date the taxes would have been
19 due but for the exemption, abatement or deferral claimed pursuant to
20 this part at three per centum above the applicable rate of interest
21 imposed by the city generally for non-payment of real property tax on
22 such date.

23 b. All taxes for which payment is deferred pursuant to section 11-257
24 of this part shall constitute a tax lien as of the date they are due and
25 payable in accordance with the provisions of that section.

26 § 11-265 Penalties for non-compliance, false statements and omissions.
27 a. The department of finance may deny, reduce, suspend, revoke or termi-
28 nate any exemption from or abatement or deferral of tax payments pursu-
29 ant to this part whenever:

30 (1) a recipient fails to comply with the requirements of this part or
31 the rules and regulations promulgated by the department of finance
32 pursuant thereto; or

33 (2) an application, certificate, report or other document delivered by
34 an applicant or recipient hereunder contains a false or misleading
35 statement as to a material fact or omits to state any material fact
36 necessary in order to make the statements therein not false or mislead-
37 ing, and may declare any applicant or recipient who makes such false or
38 misleading statement or omission to be ineligible for future exemption,
39 abatement or deferral pursuant to this part for the same or other prop-
40 erty.

41 b. Notwithstanding any other law to the contrary, a recipient shall be
42 personally liable for any taxes owed pursuant to this part whenever such
43 recipient fails to comply with such law and rules or makes such false or
44 misleading statement or omission, and the department of finance deter-
45 mines that such act was due to the recipient's willful neglect, or that
46 under the circumstances such act constituted a fraud on the department
47 of finance or a buyer or prospective buyer of the property. The remedy
48 provided herein for an action in personam shall be in addition to any
49 other remedy or procedure for the enforcement of collection of delin-
50 quent taxes provided by any general, special or local law. Any lease
51 provision which obligates a tenant to pay taxes which become due because
52 of willful neglect or fraud by the recipient, or otherwise relieve or
53 indemnify the recipient from any personal liability arising hereunder,
54 shall be void as against public policy except where the imposition of
55 such taxes or liability is occasioned by actions of the tenant in
56 violation of the lease.

1 § 11-266 Code violations; suspension of benefits. a. If a court, or
2 the environmental control board of the preceding municipality with
3 respect to matters within its jurisdiction, finds that at the property
4 which is the subject of a certificate of eligibility there has been a
5 violation of any of the provisions of the building, fire and air
6 pollution control codes of the preceding municipality set forth in
7 subdivision b of this section, all benefits pursuant to such certificate
8 shall be suspended unless within one hundred eighty days after the
9 department of finance has sent notice of such finding to the recipient,
10 and all other persons having a financial interest in the property who
11 have filed a timely request for such notice in such form as may be
12 prescribed by the department of finance, the recipient submits to the
13 department of finance, certification from the department of buildings,
14 the fire department or the department of environmental protection
15 respectively that the underlying code violation has been cured. If the
16 recipient fails to submit the required certification within the one
17 hundred eighty day period, the period of suspension shall be effective
18 retroactively to the time of the finding by the court or the environ-
19 mental control board. The suspension of benefits shall continue until
20 the recipient submits to the department of finance the required certifi-
21 cation that the violation has been cured.

22 If the original finding of violation or the denial of certification is
23 appealed and a court or appropriate governmental agency finally deter-
24 mines that the finding of violation or denial of certification was
25 invalid, any benefits lost pursuant to this section to which the recipi-
26 ent was entitled shall be restored retroactively.

27 As applied to a recipient who is eligible for deferral of tax payments
28 pursuant to subdivision d of section 11-257 of this part, suspension of
29 benefits shall be deferred by operation of such section and interest at
30 the rate charged by the department of finance for overdue taxes shall be
31 charged on the amount of any tax payments already deferred by operation
32 of such section. The interest charged shall accrue from the beginning of
33 the period of suspension.

34 b. The provisions of subdivision a of this section shall apply to
35 violations of the following provision of the code of the preceding muni-
36 cipality:

- 37 (1) section 27-4260 of the preceding municipality;
- 38 (2) section 27-4265 of the preceding municipality;
- 39 (3) section 27-4267 of the preceding municipality;
- 40 (4) section 27-954 of the preceding municipality;
- 41 (5) section 27-339 of the preceding municipality;
- 42 (6) subdivision (c) of section 27-353 of the preceding municipality;
- 43 (7) paragraph twelve of subdivision (f) of section 27-972 of the
44 preceding municipality;
- 45 (8) paragraph ten of subdivision (g) of section 27-972 of the
46 preceding municipality;
- 47 (9) subdivision (c) of section 27-975 of the preceding municipality;
- 48 (10) subdivision (c) of section 27-989 of the preceding munici-
49 pality;
- 50 (11) the following provisions to the extent applicable to cabarets
51 as defined in article two of subchapter two of the building code of
52 the preceding municipality:
 - 53 (a) section 27-542 of the preceding municipality;
 - 54 (b) subparagraph d of paragraph two of subdivision (b) of section
55 27-547 of the preceding municipality;

1 (c) paragraph three of subdivision (a) of section 27-549 of the
2 preceding municipality;

3 (d) subdivision (b) of section 27-549 of the preceding municipality;

4 (12) section 27-127 of the preceding municipality when the violation
5 concerns an unsafe condition on a facade of a building which exceeds
6 six stories in height;

7 (13) section five hundred one of reference standard 13-1 of the
8 preceding municipality;

9 (14) section one thousand three of reference standard 13-1 of the
10 preceding municipality;

11 (15) paragraph six of subdivision (b) of section 24-178 of the
12 preceding municipality; and

13 (16) section 24-185 of the preceding municipality.

14 § 11-267 Annual report. The department of finance shall submit an
15 annual report to the council, on April first of each year, concerning
16 the status of the program established pursuant to this part and its
17 effects in the city, including information on certificates of eligibil-
18 ity issued and jobs created in each area where benefits are available.

19 CHAPTER 3

20 TAX LIENS AND TAX SALES

21 § 11-301 When taxes, assessments, sewer rents, sewer surcharges and
22 water rents to be liens on land assessed. All taxes and all assessments
23 and all sewer rents, sewer surcharges and water rents, and the interest
24 and charges thereon, which may be laid or may have heretofore been laid,
25 upon any real estate now in the city, shall continue to be, until paid,
26 a lien thereon, and shall be preferred in payment to all other charges.
27 The words "water rents" whenever they are used in this chapter shall
28 include uniform annual charges and extra and miscellaneous charges for
29 the supply of water, charges in accordance with meter rates, minimum
30 charges for the supply of water by meter, annual service charges and
31 charges for meters and their connections and for their setting, repair
32 and maintenance, penalties and fines and all lawful charges for the
33 supply of water imposed pursuant to the New York city municipal water
34 finance authority act, which is set forth in title two-A of article five
35 of the public authorities law. Charges for expense of meters, their
36 connections, setting, repair or maintenance shall not be due or become a
37 charge or lien on the premises where a water meter shall be installed or
38 against which a charge shall be made, until such charge shall have been
39 definitely fixed by the commissioner of environmental protection, and an
40 entry of the amount thereof shall have been made with the date of such
41 entry in the book in which the charges for water supplied by meter
42 against such premises are to be entered. A charge in accordance with
43 meter rates or minimum charges for the supply of water measured by
44 meter, and a service charge shall not be due or become a lien or charge
45 upon the premises where such meter is installed until an entry shall
46 have been made indicating that such premises are metered, with the date
47 of such entry in the book in which the charges for water by meter meas-
48 urement against such premises are to be entered. The words "sewer rents"
49 when used in this chapter shall mean any rents or charges imposed pursu-
50 ant to section 24-514 of the code of the preceding municipality or
51 pursuant to the New York city municipal water finance authority act,
52 which is set forth in title two-A of article five of the public authori-
53 ties law. The words "sewer surcharges" when used in this chapter shall
54 mean the charges imposed pursuant to section 24-523 of the code of the
55 preceding municipality or pursuant to the New York city municipal water
56 finance authority act, which is set forth in title two-A of article five

1 of the public authorities law. Whenever an increase in the amount of
2 uniform annual charges or extra or miscellaneous charges shall have been
3 made or a charge shall have been made for water services for any build-
4 ing completed subsequent to the first day of January in each year, the
5 amount of such increase of the charge or new charge for such new build-
6 ing shall not be due or become a lien or charge against the premises
7 until the amounts thereof shall have been entered with the date of such
8 entries, respectively, in the books in which the uniform annual charges
9 and extra or miscellaneous charges against such premises are to be
10 entered. The words "tax lien" when used in this chapter shall mean the
11 lien arising pursuant to the provisions of this chapter or pursuant to
12 the New York city municipal water finance authority act, which is set
13 forth in title two-A of article five of the public authorities law, as a
14 result of the nonpayment of taxes, assessments, sewer rents, sewer
15 surcharges, water rents, any other charges that are made a lien subject
16 to the provisions of this chapter, the costs of any advertisements and
17 notices given pursuant to this chapter, any other charges that are due
18 and payable, a surcharge pursuant to section 11-332 of this chapter if
19 the tax lien is sold, interest and penalties thereon and the right of
20 the city to receive such amounts. The words "tax lien certificate" when
21 used in this chapter shall mean the instrument evidencing a tax lien and
22 executed by the commissioner of finance or his or her designee at such
23 time as such lien is transferred to a purchaser upon sale of such lien
24 by the city.

25 § 11-302 Interest rates not to be reduced. The commissioner of
26 finance shall not reduce the rate of interest upon any taxes or assess-
27 ment below the amount fixed by law.

28 § 11-302.1 Error in record of payment of tax or assessment. (a) If the
29 records of the department of finance show a charge as paid due to a
30 misapplied payment or other error, and the department later corrects the
31 records, interest shall not be imposed until after the department (i)
32 corrects the error and (ii) sends a statement of account or other simi-
33 lar bill or notice stating the amount due and when the charge must be
34 paid to avoid the accrual of interest.

35 (b) The provisions of this section shall not apply to an installment
36 of tax or an assessment for which payment, made electronically, by
37 check, or by other means, was dishonored.

38 (c) The provisions of this section shall not apply where the error in
39 the records of the department was made as a result of fraud or other
40 criminal conduct by the taxpayer or any person acting on his or her
41 behalf or at his or her request.

42 § 11-303 Arrears to be provided for in assessment rolls. There shall
43 be ruled in the yearly assessment rolls of the taxes in each section or
44 ward, a column headed "arrears," in which the commissioner of finance
45 shall annually before any taxes for the year are collected, cause to be
46 entered the word "arrears" opposite to the ward, lot, town, block and
47 map numbers on which any arrears of taxes, sewer rents, sewer surcharges
48 or water rents shall be due, or on which any assessment shall remain
49 unpaid which was due or confirmed one month prior to the first of July,
50 then last past.

51 § 11-304 Bills for taxes to show arrears. There shall be ruled a
52 column for "arrears" in every bill rendered for taxes for lots on which
53 such arrears or assessments, sewer rents, sewer surcharges or water
54 rents, and interest and penalties thereon, may be due as aforesaid, or
55 may have been sold and yet be redeemable, in which shall be written in a
56 conspicuous place, "arrears". The columns for arrears indicate lots

1 sold for arrears, or to be sold therefor; arrears to be paid and lots
2 redeemed at the office of the city collector.

3 § 11-305 Commissioner of finance to publish notice of confirmation of
4 assessments. It shall be the duty of the commissioner of finance to
5 give public notice, by advertisement, for at least ten days, in the City
6 Record and as soon as practicable and within ten days after the confir-
7 mation of any assessment, that the same has been confirmed, specifying
8 the title of such assessment, and the date of its confirmation, and also
9 the date of entry in the record of titles of assessments kept in the
10 department of finance, addressed as a class to all persons, owners of
11 property affected by any such assessment, that unless the amount
12 assessed for benefit on any person or property shall be paid within
13 ninety days after the date of the entry of any such assessment, interest
14 shall be thereafter collected thereon as provided in section 11-306 of
15 this chapter.

16 § 11-306 Interest to be charged if assessments unpaid for ninety days;
17 payment in installments. If any assessment shall remain unpaid for the
18 period of ninety days after the date of the entry thereof on the record
19 of titles of assessments, it shall be the duty of the commissioner of
20 finance or his or her designee to charge, collect and receive interest
21 thereon, at the rate of seven percent per annum, to be calculated to the
22 date of payment from the date when such assessment became a lien as
23 provided by section three hundred fourteen of the New York city charter
24 in force at the time of the adoption of the New York city charter by
25 referendum in the year nineteen hundred sixty-one, provided, however,
26 that the city collector shall accept and credit as payments on account
27 of assessments now or hereafter levied against any parcel or plot of
28 property, such sums of money not less than twenty-five dollars or multi-
29 ples thereof in amount as may be tendered for payment on account of any
30 assessment now or hereafter levied against any property. Upon requis-
31 tion by the commissioner of finance for the assessed valuation of the
32 property affected by any assessment, the president of the tax commis-
33 sion, or any tax commissioner duly assigned by him or her, shall forth-
34 with certify the same to the commissioner of finance.

35 § 11-307 Payments in installments of assessments heretofore or here-
36 after confirmed. Upon the application in writing of the owner of a
37 parcel of real property affected by an unpaid assessment heretofore or
38 hereafter confirmed the amount of which is one hundred dollars or more,
39 the commissioner of finance shall divide the assessment upon such parcel
40 into fifteen parts or, if the application so requests, into five parts,
41 as nearly equal as may be, or if the amount of such assessment is fifty
42 dollars or more but less than one hundred dollars the commissioner of
43 finance shall divide the assessment upon such parcel into five parts as
44 nearly equal as may be. One part thereof in any event shall be due and
45 payable, and in each case as many more of such parts shall be due and
46 payable as years may have elapsed since the entry of such original
47 assessment for collection. Such parts thereof with interest at the rate
48 of seven percent per annum on the amount of the assessment unpaid shall
49 be paid at the time of application as a condition of the extension of
50 time of payment of the remainder as provided in this section. Upon
51 payment of such parts and interests, the balance of such assessments
52 shall cease to be a lien upon such real property except as hereinafter
53 provided; and the remaining parts shall be paid in annual installments
54 as herein provided. Of such installments the first, with interest at
55 the rate of four percent thereon, and on the installments thereafter to
56 become due, from the date of payment of the parts of such assessment

1 paid as hereinbefore provided, shall become due and payable and be a
2 lien on the real property assessed, on the next ensuing anniversary of
3 the date of entry of the assessment in the record of titles of assess-
4 ments confirmed; and one, with interest at the rate of four percent per
5 annum thereon and on the installments thereafter to become due shall
6 become due and payable and be a lien upon the real property assessed,
7 annually thereafter. After the time herein specified for annual
8 installments and interest to become due, the amount of the lien thereon
9 shall bear interest at the rate of seven percent per annum. Any
10 installment assessment shall not be further divided into installments.
11 The first installment of an assessment divided within the ninety-day
12 period provided by section 11-306 of this chapter during which assess-
13 ment may be paid without interest shall not be subject to interest, but
14 the second installment with interest at the rate of four percent per
15 annum from the original date of entry shall become due and payable and
16 be a lien upon the real property on the anniversary date of entry of the
17 assessment and the remaining installments with interest shall become due
18 and payable and be a lien on the real property as hereinbefore provided.
19 The installments not due with interest at the rate of four percent per
20 annum to the date of payment may be paid at any time. The provisions of
21 this chapter with reference to the sale of tax liens shall apply to the
22 several unpaid installments and the interest thereon in the same manner
23 as if each installment and the interest thereon had been imposed as an
24 assessment payable in one payment, at the time such installment became a
25 lien. In the event of the acquisition by condemnation by the city for
26 public purposes any property upon which there are installments not due,
27 such installments shall become due as of the date of the entry of the
28 final order of the supreme court or the confirmation of the report of
29 the commissioners in the condemnation proceedings, and shall be set off
30 against an award that may be made for the property acquired.

31 When an award for damage shall accrue to the same person who is or was
32 at the time the assessment was confirmed liable for the assessments for
33 benefit on the abutting property in the same proceedings, only the
34 portion of the assessment in excess of such award may be considered in
35 levying in installments under the provisions of this section. Except as
36 provided in this section, no such annual installment shall be a lien or
37 deemed to be an encumbrance upon the title to the real property assessed
38 until it becomes due as herein provided.

39 § 11-308 Apportionment of assessment. If a sum of money in gross has
40 been or shall be assessed upon any lands or premises in the city, any
41 person or persons claiming any divided or undivided part thereof may pay
42 such part of the sums of money so assessed, also of the interest and
43 charges due or charged thereon, as the commissioner of finance may deem
44 to be just and equitable. The remainder of the sum of money so
45 assessed, together with the interest and charges, shall be a lien upon
46 the residue of the land and premises only, and the tax lien upon such
47 residue may be sold in pursuance of the provisions of this chapter, to
48 satisfy the residue of such assessment, interest, or charges thereon, in
49 the same manner as though the residue of such assessment had been
50 imposed upon such residue of such land or premises.

51 § 11-309 Notifying taxpayers of assessments. a. The owner of any lot,
52 piece or parcel of land in the city of Staten Island or any person
53 interested in such lot, piece or parcel, may file with the department of
54 finance, a statement containing a brief description of such land,
55 together with the section, block and lot number thereof, or such other
56 identifying information as at the time is established by the department

1 of finance, and a statement of the applicant's interest therein, together with a written request that such lot, piece or parcel of land be registered in the name of the applicant. In such statement the applicant shall designate a post office address to which notifications addressed to such applicant shall be sent. A brief description of such lot, piece or parcel of land corresponding to the description thereof in the statement so filed, together with the name of the applicant and his or her post office address and the date of such application, shall thereupon be registered in the department of finance.

10 b. As soon as any assessment for a local improvement shall have been confirmed, including assessments confirmed by a court of record, and the list thereof shall have been entered and filed in the department of finance, such assessment list shall be examined and thereupon, within twenty days after such entry there shall be mailed a notice addressed to each person in whose name any lot, piece or parcel of land, affected by such assessment, is registered, at the post office address registered in the records of the department of finance, which notice shall contain the brief description of the lot, piece or parcel of land registered in the name of the person to whom such notice is addressed, together with the amount assessed thereon, date of entry, and title of the improvement for which such assessment is made, and a statement of the rate of interest or penalty imposed for the nonpayment of such assessment, and the date from which the interest or penalty will be computed. Failure to comply with the provisions herein however, shall in no manner affect the validity or collectability of any assessment heretofore or hereafter confirmed, nor shall any claim arise or exist against the comptroller, the commissioner of finance, or any officer of the city by reason of such failure.

29 c. The commissioner of finance or his or her designee shall for the purpose of this section provide appropriate records for each section of the city, included within the respective boroughs, as the same shall appear upon the tax maps of the city.

33 § 11-310 Water charges and sewer rents to be transmitted to commissioner of finance. The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all water rents, charges, fines and penalties and all sewer rents, charges, fines and penalties as the same become due or accrue.

38 § 11-311 Sewer surcharges to be transmitted to commissioner of finance. The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all sewer surcharges, fines and penalties as the same become due or accrue.

42 § 11-312 Water rents; when payable; penalty for nonpayment. a. One-half (i) the uniform annual water charges and extra and miscellaneous charges for water not metered and (ii) annual service charges shall become due and payable, in advance if entered on January first, nineteen hundred seventy-four for the period commencing January first, nineteen hundred seventy-four and ending June thirtieth, nineteen hundred seventy-four. Commencing on June thirtieth, nineteen hundred seventy-four, uniform annual water charges and extra and miscellaneous charges for water not metered and annual service charges shall be due and payable in advance on the thirtieth day of June in each year, if entered. If any of such rents and charges which become due and payable on or before June thirtieth, nineteen hundred seventy-six shall not have been paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and

1 receive interest thereon to be calculated at the rate of seven percent
2 per annum from the date when such rents and charges became due and paya-
3 ble to December thirty-first, nineteen hundred seventy-six, and at the
4 rate of fifteen percent per annum from January first, nineteen hundred
5 seventy-seven to the date of payment. If any of such rents and charges
6 which shall become due and payable on or after June thirtieth, nineteen
7 hundred seventy-seven are not paid to the commissioner of finance or his
8 or her designee on or before the last day of the month following the
9 month of entry, it shall be the duty of the commissioner of finance or
10 his or her designee to charge, collect and receive interest thereon to
11 be calculated at the rate of fifteen percent per annum from the date
12 when such rents and charges became due and payable to the date of
13 payment. If not so entered and payable, but entered at any time subse-
14 quent thereto, they shall be due and payable when entered and notice
15 thereof shall be mailed within five days of such entry to the premises
16 against which they are imposed addressed to either the owner or the
17 occupant and, if entered on or before December thirty-first, nineteen
18 hundred seventy-six but not paid on or before the last day of the month
19 following the month of entry, it shall be the duty of the commissioner
20 of finance or his or her designee to charge, collect and receive inter-
21 est thereon to be calculated at the rate of seven percent per annum from
22 the date of entry to December thirty-first, nineteen hundred seventy-
23 six, and at the rate of fifteen percent per annum from January first,
24 nineteen hundred seventy-seven to the date of payment; if entered on or
25 after January first, nineteen hundred seventy-seven but not paid on or
26 before the last day of the month following the month of entry, it shall
27 be the duty of the commissioner of finance or his or her designee to
28 charge, collect and receive interest thereon to be calculated at the
29 rate of fifteen percent per annum from the date of entry to the date of
30 payment.

31 b. All charges for meters and their connections and for their setting,
32 repair and maintenance, and all charges in accordance with meter rates
33 for supply of water measured by meter, including minimum charges for the
34 supply of water measured by meter, shall be due and payable when
35 entered, and notice thereof shall be mailed within five days of such
36 entry stating the amount due and the nature of the rent or charge to the
37 last known address of the person whose name appears on the record of
38 such rents and charges as being the owner, occupant or agent or, where
39 no name appears, to the premises addressed to either the owner or the
40 occupant, and if entered on or before December thirty-first, nineteen
41 hundred seventy-six but not paid on or before the last day of the month
42 following the month of entry, it shall be the duty of the commissioner
43 of finance or his or her designee to charge, collect and receive inter-
44 est thereon to be calculated at the rate of seven percent per annum from
45 the date of entry to December thirty-first, nineteen hundred seventy-
46 six, and at the rate of fifteen percent per annum from January first,
47 nineteen hundred seventy-seven to the date of payment; if entered on or
48 after January first, nineteen hundred seventy-seven but not paid on or
49 before the thirtieth day following the date of entry, it shall be the
50 duty of the commissioner of finance or his or her designee to charge,
51 collect and receive interest thereon to be calculated at the rate of
52 fifteen percent per annum from the date of entry to the date of payment.

53 § 11-313 Sewer rents; when payable; penalty for nonpayment. a. As used
54 in this section:

55 1. The term "metered premises" shall mean premises, or any part there-
56 of, (a) to which water is supplied by the municipal water supply system

1 or by a private water company, and (b) at which the quantity of water
2 supplied is measured by a water meter.

3 2. The term "unmetered premises" shall mean premises, or any part
4 thereof, (a) to which water is supplied by the municipal water supply
5 system or by a private water company, and (b) at which the quantity of
6 water supplied is not measured by a water meter.

7 b. The sewer rents charged against metered premises in accordance with
8 the provisions of paragraphs two and three of subdivision b of section
9 24-514 of the code of the preceding municipality and the rules duly
10 promulgated pursuant to such section, including the minimum rents for
11 the use of the sewer system, charged pursuant to such section and rules,
12 and the sewer rents charged against any premises in accordance with the
13 provisions of paragraphs four and five of subdivision b of section
14 24-514 of the code of the preceding municipality and rules duly promul-
15 gated pursuant to such section, including the minimum rents for the use
16 of the sewer system, charged pursuant to such section and rules shall
17 become due and shall become a charge or lien on the premises when the
18 amount thereof shall have been fixed by the commissioner of environ-
19 mental protection, and an entry thereof shall have been made against
20 such premises with the date of such entry, in the book in which sewer
21 rents are to be entered. The sewer surcharges charged against any prem-
22 ises pursuant to section 24-523 of the code of the preceding munici-
23 pality shall become due and shall become a charge or lien on the prem-
24 ises when the amount thereof shall have been fixed by the commissioner
25 of environmental protection and an entry thereof shall have been made
26 against such premises in the book in which sewer surcharges are to be
27 entered. A notice thereof, stating the amount due and the nature of the
28 rent, surcharge or charge shall be mailed, within five days after such
29 entry, to the last known address of the person whose name appears upon
30 the records in the office of the department of finance as being the
31 owner, occupant or agent or, where no name appears, to the premises
32 addressed to either the owner or the occupant. If such rent, surcharge
33 or charge shall have been entered on or before December thirty-first,
34 nineteen hundred seventy-six but not paid on or before the last day of
35 the month following the month of entry, it shall be the duty of the
36 commissioner of finance or his or her designee to charge, collect and
37 receive interest thereon to be calculated at the rate of seven percent
38 per annum from the date of entry to December thirty-first, nineteen
39 hundred seventy-six, and at the rate of fifteen percent per annum from
40 January first, nineteen hundred seventy-seven to the date of payment; if
41 entered on or after January first, nineteen hundred seventy-seven but
42 not paid on or before the thirtieth day following the date of entry, it
43 shall be the duty of the commissioner of finance or his or her designee
44 to charge, collect and receive interest thereon to be calculated at the
45 rate of fifteen percent per annum from the date of entry to the date of
46 payment. The rents or charges for the use of the sewer system charged
47 during any specified period of time pursuant to the provisions of
48 section 24-514 of the code of the preceding municipality and the rules
49 promulgated thereunder shall be computed, in accordance with the
50 provisions of such section and the rules duly promulgated thereunder, on
51 the basis of water rents or charges computed for the same period.

52 c. Sewer rents charged against unmetered premises in accordance with
53 the provisions of paragraphs two and three of subdivision b of section
54 24-514 of the code of the preceding municipality and the rules duly
55 promulgated pursuant to such section, for the use of the sewer system
56 during the one-year period commencing on the first day of July of each

1 year, shall be due and payable and shall become a charge or lien on the
2 premises on the first day of January following such first day of July,
3 if entered, except that commencing on June thirtieth, nineteen hundred
4 seventy-four such sewer rents shall be due and payable in advance on the
5 thirtieth day of June in each year, if entered, and shall become a
6 charge or lien on the premises on such date. If any of such rents or
7 charges which became due and payable on or before June thirtieth, nine-
8 teen hundred seventy-six shall not have been paid to the commissioner of
9 finance or his or her designee within thirty days after such first day
10 of January, or, commencing on the thirtieth day of June, nineteen
11 hundred seventy-four, on or before the last day of the month following
12 the month of entry, it shall be the duty of the commissioner of finance
13 or his or her designee to charge, collect and receive interest thereon
14 to be calculated at the rate of seven percent per annum from the date
15 when such charges became due and payable to December thirty-first, nine-
16 teen hundred seventy-six, and at the rate of fifteen percent per annum
17 from January first, nineteen hundred seventy-seven to the date of
18 payment. If any of such rents or charges which shall become due and
19 payable on or after June thirtieth, nineteen hundred seventy-seven are
20 not paid to the commissioner of finance or his or her designee on or
21 before the last day of the month following the month of entry, it shall
22 be the duty of the commissioner of finance or his or her designee to
23 charge, collect and receive interest thereon to be calculated at the
24 rate of fifteen percent per annum from the date when such rents or
25 charges became due and payable to the date of payment. If not so entered
26 and payable, but entered at any time subsequent thereto, they shall be
27 due and payable and shall become a charge or lien on the premises when
28 entered and notice thereof shall be mailed within five days after such
29 entry, to the last known address of the person whose name appears upon
30 the records in the department of finance as the owner or the occupant or
31 if no name appears, to the premises addressed to either the owner or
32 occupant. If any of such rents or charges which were entered on or
33 before December thirty-first, nineteen hundred seventy-six but not paid
34 on or before the last day of the month following the month of entry, it
35 shall be the duty of the commissioner of finance or his or her designee
36 to charge, collect and receive interest thereon to be calculated at the
37 rate of seven percent per annum from the date of entry to December thir-
38 ty-first, nineteen hundred seventy-six, and at the rate of fifteen
39 percent per annum from January first, nineteen hundred seventy-seven to
40 the date of payment; if entered on or after January first, nineteen
41 hundred seventy-seven but not paid on or before the last day of the
42 month following the month of entry, it shall be the duty of the commis-
43 sioner of finance or his or her designee to charge, collect and receive
44 interest thereon to be calculated at the rate of fifteen percent per
45 annum from the date of entry to the date of payment. The sewer rents
46 charged against unmetered premises for the use of the sewer system
47 during the one-year period commencing on the first day of July of each
48 year shall be computed in accordance with the provisions of section
49 24-514 of the code of the preceding municipality and the rules duly
50 promulgated thereunder, upon the basis of water rents or charges
51 computed for the same period.

52 d. Whenever an increase in the amount of the sewer rent charged
53 against unmetered premises shall have been made or a charge shall have
54 been made for sewer services for any building completed subsequent to
55 the first day of July in each year, the amount of such increase of the
56 charge or new charge for such new building shall not be due or become a

1 lien or charge against the premises until the amounts thereof shall have
2 been entered with the date of such entries, respectively, in the books
3 in which sewer rents charged against such premises are to be entered.

4 e. No later than the twenty-fifth day of May in each year, the banking
5 commission shall transmit a written recommendation to the council of a
6 proposed interest rate to be charged for nonpayment of sewer rents. In
7 making such recommendations the commission shall consider the prevailing
8 interest rates charged for commercial loans extended to prime borrowers
9 by commercial banks operating in the city and shall propose a rate of at
10 least six per centum per annum greater than such rates. The council may
11 by resolution adopt an interest rate to be charged for nonpayment of
12 sewer rents pursuant to section 11-224 of the code and, for nonpayment
13 of sewer rents that become due and payable on or after July first, two
14 thousand five, pursuant to section 11-224.1 of the code, and may specify
15 in such resolution the date on which such interest rate is to take
16 effect.

17 § 11-314 Notice of rules and regulations; penalty for nonpayment;
18 water supply cut off. The rates and charges for supply of water, the
19 annual service charges and minimum charges, the sewer rents, the sewer
20 surcharges, the rules and regulations concerning the use of water, all
21 other rules and regulations affecting users of water or concerning
22 charges for supply of water, restrictions of the use of water, installa-
23 tion of meters, and all rules and regulations affecting property
24 connected with the sewer system, penalties and fines for violations of
25 rules and regulations shall be printed on each bill and permit so far as
26 in the judgment of the commissioner of environmental protection they are
27 applicable. This section and such printing and the printing of this
28 section on such bills and permits shall be sufficient notice to owners,
29 tenants or occupants of premises to authorize the imposition and recov-
30 ery of any charges, surcharges and fines imposed under such rules and
31 regulations and of any penalties imposed in pursuance of this chapter in
32 addition to cutting off the supply of water. Where water charges payable
33 in advance or sewer rents or charges payable as provided in subdivision
34 c of section 11-313 of this chapter, are not paid within the period
35 covered by such charges or rents, and a notice of such nonpayment is
36 mailed by the commissioner of finance to the premises addressed to
37 "owner or occupant," the commissioner of environmental protection may
38 shut off the supply of water to such premises. Where water charges not
39 payable in advance or sewer rents, sewer surcharges or charges payable
40 as provided in subdivisions b and d of section 11-313 of this chapter
41 have been made by the department and remain unpaid for more than thirty
42 days or where the commissioner of environmental protection has certified
43 that there is a flagrant and continued violation of a provision or
44 provisions of section 24-523 of the code or of any rule or regulation
45 promulgated pursuant thereto or of any order of the commissioner of
46 environmental protection issued pursuant thereto, after notice thereof
47 mailed to the premises addressed to "owner or occupant," the commis-
48 sioner of environmental protection may shut off the supply of water to the
49 premises.

50 § 11-315 Enforcement of collection of sewer rents, sewer surcharges
51 and water rents. Sewer rents, sewer surcharges, charges, penalties and
52 fines, and interest thereon, and water rents, charges, penalties and
53 fines, and interest thereon, shall after they are payable to the commis-
54 sioner of finance or his or her designee be enforced in the manner
55 provided in this chapter and chapter four of this title. In addition to
56 collecting sewer rents, sewer surcharges, charges, penalties and fines

1 and interest thereon and water rents, charges, penalties and fines and
2 interest thereon in the manner provided in this chapter and chapter four
3 of this title, the city may maintain an action for their recovery
4 against the person for whose benefit or by whom the water is taken or
5 used or for whose benefit or by whom sewer service is used.

6 § 11-316 Bills of arrears of taxes, assessments, sewer rents, sewer
7 surcharges and water rents, any other charges that are made a lien
8 subject to the provisions of this chapter, and interest and penalties
9 thereon to be furnished when requested. The commissioner of finance or
10 his or her designee, upon the written request of the owner, the proposed
11 vendee under a contract of sale, a mortgagee, any person having a vested
12 or contingent interest in any lot or lots or their duly authorized
13 agent, or any person who has made a filing pursuant to section 11-309 of
14 this chapter shall furnish a bill of all arrears of taxes on any lot or
15 lots due prior to the first of September, then last past, of sewer
16 rents, sewer surcharges and water rents, assessments, any other charges
17 that are made a lien subject to the provisions of this chapter, and
18 interest and penalties thereon, which are due and payable. Upon the
19 payment of such bill which shall be called a bill of arrears the receipt
20 of the commissioner of finance or his or her designee thereon shall be
21 conclusive evidence of such payment. The commissioner of finance or his
22 or her designee shall cause to be kept an account of amounts so
23 collected, and the certificate of the commissioner of finance or his or
24 her designee, that there are no tax liens on such lot or lots, shall
25 forever free such lot or lots from all liens of taxes, sewer rents,
26 sewer surcharges or water rents, assessments, any other charges that are
27 made a lien subject to the provisions of this chapter, and interest and
28 penalties thereon that are due and payable prior to the date of such
29 receipt or certificate, but not from the lien of any tax lien duly sold
30 and not theretofore satisfied.

31 § 11-317 Fees for searches to be added to bills. Fees for such search-
32 es shall be included in the bills mentioned in section 11-316 of this
33 chapter, and also charges for certificates, which shall be given by the
34 commissioner of finance or his or her designee respecting lots on which
35 there may be no arrears when searches are required. Such fees shall be
36 regulated by local law.

37 § 11-318 Fee for certified search and bill of arrears. A fee of twen-
38 ty-five dollars shall be paid to and collected by the commissioner of
39 finance or his or her designee on his or her furnishing a certified
40 search and bill of arrears on each lot or piece of property mentioned or
41 referred to in the written request therefor. The commissioner of finance
42 shall be authorized to waive or reduce such fee in connection with any
43 sale of a tax lien or tax liens pursuant to this chapter.

44 § 11-319 Sales of tax liens. a. A tax lien or tax liens on a property
45 or any component of the amount thereof may be sold by the city as
46 authorized by subdivision b of this section, when such tax lien or tax
47 liens shall have remained unpaid in whole or in part for one year,
48 provided, however, that a tax lien or tax liens on any class one proper-
49 ty or any class two property that is a residential condominium or resi-
50 dential cooperative, as such classes of property are defined in subdivi-
51 sion one of section eighteen hundred two of the real property tax law,
52 may be sold by the city only when the real property tax component of
53 such tax lien or tax liens shall have remained unpaid in whole or in
54 part for three years and, in the case of any such class one property
55 that is not vacant land or any such class two property that is a resi-
56 dential condominium or residential cooperative, as such classes of prop-

erty are defined in subdivision one of section eighteen hundred two of the real property tax law, equals or exceeds the sum of five thousand dollars, or, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, for two years, and equals or exceeds the sum of five thousand dollars, or, in the case of abandoned class one property or abandoned class two property that is a residential condominium or residential cooperative, for eighteen months, and after such sale, shall be transferred, in the manner provided by this chapter, and provided, further, however, that (i) the real property tax component of such tax lien may not be sold pursuant to this subdivision on any: (A) residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of such residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of such residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date; or (B) real property that was granted an exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law in one of the two fiscal years preceding the date of such sale, provided that: (1) such exemption was granted to such real property upon the application of a not-for-profit organization that owns such real property on or after the date on which such real property was conveyed to such not-for-profit organization; (2) the real property tax component of such lien arose on or after the date on which such real property was conveyed to such not-for-profit organization; and (3) such not-for-profit organization is organized or conducted for one of the purposes described in paragraph a or paragraph b of subdivision one of section 11-246 of this title, and (ii) the sewer rents component, sewer surcharges component or water rents component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of any two or three family residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six

1 of the tax law for the calendar year in which the date of the first
2 publication, pursuant to subdivision a of section 11-320 of this chap-
3 ter, of the notice of sale, occurs or for the calendar year immediately
4 preceding such date. A tax lien or tax liens on any property classified
5 as a class two property, except a class two property that is a residen-
6 tial condominium or residential cooperative, or a class two residential
7 property owned by a company organized pursuant to article eleven of the
8 private housing finance law that is not a residential condominium or a
9 residential cooperative, or class three property, as such classes of
10 property are defined in subdivision one of section eighteen hundred two
11 of the real property tax law, shall not be sold by the city unless such
12 tax lien or tax liens include a real property tax component as of the
13 date of the first publication, pursuant to subdivision a of section
14 11-320 of this chapter, of the notice of sale. Notwithstanding any
15 provision of this subdivision to the contrary, any such tax lien or tax
16 liens that remain unpaid in whole or in part after such date may be sold
17 regardless of whether such tax lien or tax liens include a real property
18 tax component. A tax lien or tax liens on a property classified as a
19 class four property, as such class of property is defined in subdivision
20 one of section eighteen hundred two of the real property tax law, shall
21 not be sold by the city unless such tax lien or tax liens include a real
22 property tax component or sewer rents component or sewer surcharges
23 component or water rents component or emergency repair charges compo-
24 nent, where such emergency repair charges accrued on or after January
25 first, two thousand six and are made a lien pursuant to section 27-2144
26 of this code, as of the date of the first publication, pursuant to
27 subdivision a of section 11-320 of this chapter, of the notice of sale,
28 provided, however, that any tax lien or tax liens that remain unpaid in
29 whole or in part after such date may be sold regardless of whether such
30 tax lien or tax liens include a real property tax component, sewer rents
31 component, sewer surcharges component, water rents component or emergen-
32 cy repair charges component. For purposes of this subdivision, the words
33 "real property tax" shall not include an assessment or charge upon prop-
34 erty imposed pursuant to section 25-411 of this code. A sale of a tax
35 lien or tax liens shall include, in addition to such lien or liens that
36 have remained unpaid in whole or in part for one year, or, in the case
37 of any class one property or class two property that is a residential
38 condominium or residential cooperative, when the real property tax
39 component of such lien or liens has remained unpaid in whole or in part
40 for three years, or, in the case of any class two residential property
41 owned by a company organized pursuant to article eleven of the private
42 housing finance law that is not a residential condominium or a residen-
43 tial cooperative, when the real property tax component of such lien or
44 liens has remained unpaid in whole or in part for two years, and equals
45 or exceeds the sum of five thousand dollars, any taxes, assessments,
46 sewer rents, sewer surcharges, water rents, any other charges that are
47 made a lien subject to the provisions of this chapter, the costs of any
48 advertisements and notices given pursuant to this chapter, any other
49 charges that are due and payable, a surcharge pursuant to section 11-332
50 of this chapter, and interest and penalties thereon or such component of
51 the amount thereof as shall be determined by the commissioner of
52 finance. The commissioner of finance may promulgate rules defining
53 "abandoned" property, as such term is used in this subdivision.

54 a-1. A subsequent tax lien or tax liens on a property or any component
55 of the amount thereof may be sold by the city pursuant to this chapter,
56 provided, however, that notwithstanding any provision in this chapter to

1 the contrary, such tax lien or tax liens may be sold regardless of
2 whether such tax lien or tax liens have remained unpaid in whole or in
3 part for one year and, notwithstanding any provision in this chapter to
4 the contrary, in the case of any class one property or class two proper-
5 ty that is a residential condominium or residential cooperative or,
6 beginning January first, two thousand twelve, in the case of any class
7 two residential property owned by a company organized pursuant to arti-
8 cle eleven of the private housing finance law that is not a residential
9 condominium or a residential cooperative, such tax lien or tax liens may
10 be sold if the real property tax component of such tax lien or tax liens
11 has remained unpaid in whole or in part for one year, and provided,
12 further, however, that (i) the real property tax component of such tax
13 lien may not be sold pursuant to this subdivision on any residential
14 real property in class one that is receiving an exemption pursuant to
15 section 11-245.3 or 11-245.4 of this title, or pursuant to section four
16 hundred fifty-eight of the real property tax law with respect to real
17 property purchased with payments received as prisoner of war compen-
18 sation from the United States government, or pursuant to paragraph (b)
19 or (c) of subdivision two of section four hundred fifty-eight-a of the
20 real property tax law, or where the owner of such residential real prop-
21 erty in class one is receiving benefits in accordance with department of
22 finance memorandum 05-3, or any successor memorandum thereto, relating
23 to active duty military personnel, or where the owner of such residen-
24 tial real property in class one has been allowed a credit pursuant to
25 subsection (e) of section six hundred six of the tax law for the calen-
26 dar year in which the date of the first publication, pursuant to subdi-
27 vision a of section 11-320 of this chapter, of the notice of sale,
28 occurs or for the calendar year immediately preceding such date and (ii)
29 the sewer rents component, sewer surcharges component or water rents
30 component of such tax lien may not be sold pursuant to this subdivision
31 on any one family residential real property in class one or on any two
32 or three family residential real property in class one that is receiving
33 an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
34 pursuant to section four hundred fifty-eight of the real property tax
35 law with respect to real property purchased with payments received as
36 prisoner of war compensation from the United States government, or
37 pursuant to paragraph (b) or (c) of subdivision two of section four
38 hundred fifty-eight-a of the real property tax law, or where the owner
39 of any two or three family residential real property in class one is
40 receiving benefits in accordance with department of finance memorandum
41 05-3, or any successor memorandum thereto, relating to active duty mili-
42 tary personnel, or where the owner of any two or three family residen-
43 tial real property in class one has been allowed a credit pursuant to
44 subsection (e) of section six hundred six of the tax law for the calen-
45 dar year in which the date of the first publication, pursuant to subdi-
46 vision a of section 11-320 of this chapter, of the notice of sale,
47 occurs or for the calendar year immediately preceding such date. For
48 purposes of this subdivision, the term "subsequent tax lien or tax
49 liens" shall mean any tax lien or tax liens on property that become such
50 on or after the date of sale of any tax lien or tax liens on such prop-
51 erty that have been sold pursuant to this chapter, provided that the
52 prior tax lien or tax liens remain unpaid as of the date of the first
53 publication, pursuant to subdivision a of section 11-320 of this chap-
54 ter, of the notice of sale of the subsequent tax lien or tax liens. A
55 subsequent tax lien or tax liens on any property classified as a class
56 two property, except a class two property that is a residential condo-

1 minium or residential cooperative, or a class two residential property
2 owned by a company organized pursuant to article eleven of the private
3 housing finance law that is not a residential condominium or a residen-
4 tial cooperative, or class three property, as such classes of property
5 are defined in subdivision one of section eighteen hundred two of the
6 real property tax law, shall not be sold by the city unless such tax
7 lien or tax liens include a real property tax component as of the date
8 of the first publication, pursuant to subdivision a of section 11-320 of
9 this chapter, of the notice of sale. Notwithstanding any provision of
10 this subdivision to the contrary, any such tax lien or tax liens that
11 remain unpaid in whole or in part after such date may be sold regardless
12 of whether such tax lien or tax liens include a real property tax compo-
13 nent. A subsequent tax lien or tax liens on a property classified as a
14 class four property, as such class of property is defined in subdivision
15 one of section eighteen hundred two of the real property tax law, shall
16 not be sold by the city unless such tax lien or tax liens include a real
17 property tax component or sewer rents component or sewer surcharges
18 component or water rents component or emergency repair charges compo-
19 nent, where such emergency repair charges accrued on or after January
20 first, two thousand six and are made a lien pursuant to section 27-2144
21 of this code, as of the date of the first publication, pursuant to
22 subdivision a of section 11-320 of this chapter, of the notice of sale,
23 provided, however, that any tax lien or tax liens that remain unpaid in
24 whole or in part after such date may be sold regardless of whether such
25 tax lien or tax liens include a real property tax component, sewer rents
26 component, sewer surcharges component, water rents component or emergen-
27 cy repair charges component. For purposes of this subdivision, the words
28 "real property tax" shall not include an assessment or charge upon prop-
29 erty imposed pursuant to section 25-411 of this code. Nothing in this
30 subdivision shall be deemed to limit the rights conferred by section
31 11-332 of this chapter on the holder of a tax lien certificate with
32 respect to a subsequent tax lien.

33 a-2. In addition to any sale authorized pursuant to subdivision a or
34 subdivision a-1 of this section and notwithstanding any provision of
35 this chapter to the contrary, beginning on December first, two thousand
36 seven, the water rents, sewer rents and sewer surcharges components of
37 any tax lien on any class of real property, as such real property is
38 classified in subdivision one of section eighteen hundred two of the
39 real property tax law, may be sold by the city pursuant to this chapter,
40 where such water rents, sewer rents or sewer surcharges component of
41 such tax lien, as of the date of the first publication, pursuant to
42 subdivision a of section 11-320 of this chapter, of the notice of sale:
43 (i) shall have remained unpaid in whole or in part for one year and (ii)
44 equals or exceeds the sum of one thousand dollars or, beginning on March
45 first, two thousand eleven, in the case of any two or three family resi-
46 dential real property in class one, for one year, and equals or exceeds
47 the sum of two thousand dollars, or, beginning on January first, two
48 thousand twenty-one, in the case of any two or three family residential
49 real property in class one, for one year, and equals or exceeds the sum
50 of three thousand dollars, or, beginning on January first, two thousand
51 twelve, in the case of any class two residential property owned by a
52 company organized pursuant to article eleven of the private housing
53 finance law that is not a residential condominium or a residential coop-
54 erative, as such class of property is defined in subdivision one of
55 section eighteen hundred two of the real property tax law, for two
56 years, and equals or exceeds the sum of five thousand dollars; provided,

1 however, that such water rents, sewer rents or sewer surcharges compo-
2 nent of such tax lien may not be sold pursuant to this subdivision on
3 any one family residential real property in class one or on any two or
4 three family residential real property in class one that is receiving an
5 exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
6 pursuant to section four hundred fifty-eight of the real property tax
7 law with respect to real property purchased with payments received as
8 prisoner of war compensation from the United States government, or
9 pursuant to paragraph (b) or (c) of subdivision two of section four
10 hundred fifty-eight-a of the real property tax law, or where the owner
11 of any two or three family residential real property in class one is
12 receiving benefits in accordance with department of finance memorandum
13 05-3, or any successor memorandum thereto, relating to active duty mili-
14 tary personnel, or where the owner of any two or three family residen-
15 tial real property in class one has been allowed a credit pursuant to
16 subsection (e) of section six hundred six of the tax law for the calen-
17 dar year in which the date of the first publication, pursuant to subdi-
18 vision a of section 11-320 of this chapter, of the notice of sale,
19 occurs or for the calendar year immediately preceding such date. After
20 such sale, any such water rents, sewer rents or sewer surcharges compo-
21 nent of such tax lien may be transferred in the manner provided by this
22 chapter.

23 a-3. In addition to any sale authorized pursuant to subdivision a or
24 subdivision a-1 of this section and notwithstanding any provision of
25 this chapter to the contrary, beginning on December first, two thousand
26 seven, a subsequent tax lien on any class of real property, as such real
27 property is classified in subdivision one of section eighteen hundred
28 two of the real property tax law, may be sold by the city pursuant to
29 this chapter, regardless of whether such subsequent tax lien, or any
30 component of the amount thereof, shall have remained unpaid in whole or
31 in part for one year, and regardless of whether such subsequent tax
32 lien, or any component of the amount thereof, equals or exceeds the sum
33 of one thousand dollars or beginning on March first, two thousand elev-
34 en, in the case of any two or three family residential real property in
35 class one, a subsequent tax lien on such property may be sold by the
36 city pursuant to this chapter, regardless of whether such subsequent tax
37 lien, or any component of the amount thereof, shall have remained unpaid
38 in whole or in part for one year, and regardless of whether such subse-
39 quent tax lien, or any component of the amount thereof, equals or
40 exceeds the sum of two thousand dollars, or, beginning on January first,
41 two thousand twenty-one, in the case of any two or three family residen-
42 tial real property in class one, a subsequent tax lien on such property
43 may be sold by the city pursuant to this chapter, regardless of whether
44 such subsequent tax lien, or any component of the amount thereof, shall
45 have remained unpaid in whole or in part for one year, and regardless of
46 whether such subsequent tax lien, or any component of the amount there-
47 of, equals or exceeds the sum of three thousand dollars, or, beginning
48 on January first, two thousand twelve, in the case of any class two
49 residential property owned by a company organized pursuant to article
50 eleven of the private housing finance law that is not a residential
51 condominium or a residential cooperative, as such class of property is
52 defined in subdivision one of section eighteen hundred two of the real
53 property tax law, a subsequent tax lien on such property may be sold by
54 the city pursuant to this chapter, regardless of whether such subsequent
55 tax lien, or any component of the amount thereof, shall have remained
56 unpaid in whole or in part for two years, and regardless of whether such

1 subsequent tax lien, or any component of the amount thereof, equals or
2 exceeds the sum of five thousand dollars; provided, however, that such
3 subsequent tax lien may not be sold pursuant to this subdivision on any
4 one family residential real property in class one or on any two or three
5 family residential real property in class one that is receiving an
6 exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
7 pursuant to section four hundred fifty-eight of the real property tax
8 law with respect to real property purchased with payments received as
9 prisoner of war compensation from the United States government, or
10 pursuant to paragraph (b) or (c) of subdivision two of section four
11 hundred fifty-eight-a of the real property tax law, or where the owner
12 of any two or three family residential real property in class one is
13 receiving benefits in accordance with department of finance memorandum
14 05-3, or any successor memorandum thereto, relating to active duty mili-
15 tary personnel, or where the owner of any two or three family residen-
16 tial real property in class one has been allowed a credit pursuant to
17 subsection (e) of section six hundred six of the tax law for the calen-
18 dar year in which the date of the first publication, pursuant to subdi-
19 vision a of section 11-320 of this chapter, of the notice of sale,
20 occurs or for the calendar year immediately preceding such date. After
21 such sale, any such subsequent tax lien, or any component of the amount
22 thereof, may be transferred in the manner provided by this chapter. For
23 purposes of this subdivision, the term "subsequent tax lien" shall mean
24 the water rents, sewer rents or sewer surcharges component of any tax
25 lien on property that becomes such on or after the date of sale of any
26 water rents, sewer rents or sewer surcharges component of any tax lien
27 on such property that has been sold pursuant to this chapter, provided
28 that the prior tax lien remains unpaid as of the date of the first
29 publication, pursuant to subdivision a of section 11-320 of this chap-
30 ter, of the notice of sale of the subsequent tax lien. Nothing in this
31 subdivision shall be deemed to limit the rights conferred by section
32 11-332 of this chapter on the holder of a tax lien certificate with
33 respect to a subsequent tax lien.

34 a-4. In addition to any sale authorized pursuant to subdivision a,
35 a-1, a-2 or a-3 of this section and notwithstanding any provision of
36 this chapter to the contrary, beginning on March first, two thousand
37 eleven, the emergency repair charges component or alternative enforce-
38 ment expenses and fees component, where such emergency repair charges
39 accrued on or after January first, two thousand six and are made a lien
40 pursuant to section 27-2144 of this code, or where such alternative
41 enforcement expenses and fees are made a lien pursuant to section
42 27-2153 of this code, of any tax lien on any class of real property, as
43 such real property is defined in subdivision one of section eighteen
44 hundred two of the real property tax law, may be sold by the city pursu-
45 ant to this chapter, where such emergency repair charges component or
46 alternative enforcement expenses and fees component of such tax lien, as
47 of the date of the first publication, pursuant to subdivision a of
48 section 11-320 of this chapter, of the notice of sale: (i) shall have
49 remained unpaid in whole or in part for one year and (ii) equals or
50 exceeds the sum of one thousand dollars or, beginning on January first,
51 two thousand twelve, in the case of any class two residential property
52 owned by a company organized pursuant to article eleven of the private
53 housing finance law that is not a residential condominium or a residen-
54 tial cooperative, as such class of property is defined in subdivision
55 one of section eighteen hundred two of the real property tax law, for
56 two years, and equals or exceeds the sum of five thousand dollars;

1 provided, however, that such emergency repair charges component or
2 alternative enforcement expenses and fees component of such tax lien may
3 only be sold pursuant to this subdivision on any one, two or three fami-
4 ly residential real property in class one, where such one, two or three
5 family residential property in class one is not the primary residence of
6 the owner. After such sale, any such emergency repair charges component
7 or alternative enforcement expenses and fees component of such tax lien
8 may be transferred in the manner provided by this chapter.

9 a-5. In addition to any sale authorized pursuant to subdivision a,
10 a-1, a-2 or a-3 of this section and notwithstanding any provision of
11 this chapter to the contrary, beginning on March first, two thousand
12 eleven, a subsequent tax lien on any class of real property, or begin-
13 ning on January first, two thousand twelve in the case of any class two
14 residential property owned by a company organized pursuant to article
15 eleven of the private housing finance law that is not a residential
16 condominium or a residential cooperative, a subsequent tax lien on such
17 property, may be sold by the city pursuant to this chapter, regardless
18 of the length of time such subsequent tax lien, or any component of the
19 amount thereof, shall have remained unpaid, and regardless of the amount
20 of such subsequent tax lien. After such sale, any such subsequent tax
21 lien, or any component of the amount thereof, may be transferred in the
22 manner provided by this chapter. For purposes of this subdivision, the
23 term "subsequent tax lien" shall mean the emergency repair charges
24 component or alternative enforcement expenses and fees component, where
25 such emergency repair charges accrued on or after January first, two
26 thousand six and are made a lien pursuant to section 27-2144 of this
27 code, or where such alternative enforcement expenses and fees are made a
28 lien pursuant to section 27-2153 of this code, of any tax lien on prop-
29 erty that becomes such on or after the date of sale of any emergency
30 repair charges component or alternative enforcement expenses and fees
31 component, of any tax lien on such property that has been sold pursuant
32 to this chapter, provided that the prior tax lien remains unpaid as of
33 the date of the first publication, pursuant to subdivision a of section
34 11-320 of this chapter, of the notice of sale of the subsequent tax
35 lien. Nothing in this subdivision shall be deemed to limit the rights
36 conferred by section 11-332 of this chapter on the holder of a tax lien
37 certificate with respect to a subsequent tax lien.

38 a-6. Notwithstanding any provision of this chapter to the contrary,
39 beginning on September first, two thousand seventeen, a lien that
40 includes civil penalties for a violation of section 28-201.1 of this
41 code where such civil penalties accrued on or after July first, two
42 thousand seventeen, and became a lien pursuant to section 28-204.6.6 of
43 this code, may be sold by the city pursuant to this chapter, where such
44 civil penalties component of such lien, as of the date of the first
45 publication, pursuant to subdivision a of section 11-320 of this chap-
46 ter, of the notice of sale (i) shall have remained unpaid in whole or in
47 part for one year or more and (ii) equals or exceeds the sum of one
48 thousand dollars. After such sale, any such civil penalties component of
49 such lien may be transferred in the manner provided by this chapter.

50 b. The commissioner of finance, on behalf of the city, may sell tax
51 liens, either individually, in combinations, or in the aggregate, pursu-
52 ant to the procedures provided herein. The commissioner of finance shall
53 establish the terms and conditions of a sale of a tax lien or tax liens.

54 1. (i) The commissioner of finance may, in his or her discretion, sell
55 a tax lien or tax liens through a competitive sale. In addition to the
56 advertisement and notice required to be provided pursuant to section

1 11-320 of this chapter, the commissioner of finance or his or her desig-
2 nee shall cause to be published a notice of intention to sell a tax lien
3 or tax liens through a competitive sale, which notice shall include the
4 terms and conditions for such sale, the criteria by which bids shall be
5 evaluated, and a request for any other information or documents that the
6 commissioner of finance may require. Such notice shall be published in
7 one newspaper of general circulation in the city, not less than fifteen
8 days prior to the date designated by the commissioner for the submission
9 of bids.

10 (ii) The commissioner of finance may, in his or her discretion, estab-
11 lish criteria for the eligibility of bidders pursuant to section
12 11-321.1 of this chapter.

13 (iii) The commissioner of finance may reject any or all bids, or may
14 accept any combination of bids in a competitive sale.

15 2. (i) The commissioner of finance may, in his or her discretion, sell
16 a tax lien or tax liens through a negotiated sale. In addition to the
17 advertisement and notice required to be provided pursuant to section
18 11-320 of this chapter, the commissioner of finance or his or her desig-
19 nee shall cause to be published a notice of intention to sell a tax lien
20 or tax liens through a negotiated sale, which notice shall advise that a
21 request for statements of interest is available at the office of the
22 department of finance, and which may require the submission of any
23 information or documents that the commissioner deems appropriate,
24 provided, however, that if the negotiated sale is to a trust or other
25 entity created by the city or in which the city has an ownership or
26 residual interest, then the requirement that the notice advise that a
27 request for statements of interest is available at the office of the
28 department of finance shall not apply. Such notice shall be published in
29 one newspaper of general circulation in the city, not less than fifteen
30 days prior to the date designated by the commissioner for the receipt of
31 statements of interest, or if the negotiated sale is to such trust or
32 other entity, then such notice shall be published not less than fifteen
33 days prior to the date of sale. For purposes of this subparagraph, the
34 words "date of sale" shall have the same meaning provided in subdivision
35 e of section 11-320 of this chapter.

36 (ii) The commissioner of finance may engage in a negotiated sale in
37 accordance with criteria to be established pursuant to section 11-321.1
38 of this chapter.

39 (iii) The commissioner of finance may execute a purchase and sale
40 agreement and other necessary agreements with a designated purchaser or
41 purchasers to complete a negotiated sale.

42 3. The commissioner of finance may establish a minimum price for the
43 sale of tax liens that may be at a discount from or premium to the lien
44 amount. Notwithstanding the preceding sentence, the commissioner of
45 finance may not establish a minimum price for the sale of an individual
46 tax lien that is at a discount from the lien amount. The commissioner of
47 finance shall sell such tax liens at a purchase price that, in the
48 determination of such commissioner, is in the best interests of the
49 city. The commissioner of finance, in his or her discretion, may accept
50 cash or cash equivalent in immediately available funds, or other consid-
51 eration acceptable to the commissioner, or any combination thereof in
52 payment for a tax lien or tax liens.

53 4. The amount of a tax lien that is sold pursuant to this chapter
54 shall be the unpaid amount of the lien as of the date of sale, including
55 any interest and penalties thereon, any taxes, assessments, sewer rents,
56 sewer surcharges, water rents, any other charges that are made a lien

1 subject to the provisions of this chapter, the costs of any advertise-
2 ments and notices given pursuant to this chapter, any other charges that
3 are due and payable, any surcharge pursuant to section 11-332 of this
4 chapter, and interest and penalties thereon, or such component of the
5 amount thereof as shall be determined by the commissioner of finance,
6 notwithstanding the amount paid for purchase of the tax lien or compo-
7 nent of the amount thereof. For purposes of this paragraph, the words
8 "date of sale" shall have the same meaning provided in subdivision y of
9 section 11-320 of this chapter.

10 5. (i) The commissioner of finance may, subsequent to the offer for
11 sale of any tax lien or tax liens and the failure to complete such sale,
12 offer such tax lien or tax liens for sale again to any other person or
13 persons who satisfied the terms and conditions of the sale without
14 providing any additional advertisements or notices pursuant to this
15 chapter.

16 (ii) Notwithstanding subparagraph (i) of this paragraph, any tax lien
17 that was noticed for sale pursuant to this chapter, but was not sold on
18 the original date of sale, may be sold without any additional advertise-
19 ments or notices pursuant to this chapter if the subsequent date of sale
20 is within six months of the second publication, pursuant to subdivision
21 a of section 11-320 of this chapter, of the notice of the original date
22 of sale. If the subsequent date of sale is more than six months after
23 the second publication, pursuant to subdivision a of section 11-320 of
24 this chapter, of the notice of the original date of sale, then the
25 commissioner of finance, or his or her designee, shall provide notice of
26 the subsequent date of sale pursuant to subdivision b of section 11-320
27 of this chapter. No other additional advertisements or notices shall be
28 necessary prior to the date of sale.

29 6. The rate of interest on any tax lien certificate shall be the rate
30 adopted for nonpayment of taxes on real property, pursuant to subdivi-
31 sion (e) of section 11-224.1 of this title, that is in effect on January
32 first of the year in which the tax lien is sold.

33 7. It is the intent of the city that a sale of a tax lien or tax liens
34 pursuant to this chapter shall be a sale and not a borrowing.

35 8. Whenever any tax lien purchased at a tax lien sale is found to be
36 invalid, void or defective in whole or in part, or not to conform to any
37 representation or warranty with respect thereto, made by the commis-
38 sioner of finance in connection with the sale thereof, by judgment or decree
39 of a court of competent jurisdiction or by determination of the commis-
40 sioner of finance, the commissioner of finance may, in his or her
41 discretion, substitute for such tax lien or portion thereof another tax
42 lien that has a value equivalent to the value of the tax lien or portion
43 thereof found to be invalid, void, defective, or not to so conform, or
44 may refund such value of the tax lien or portion thereof found to be
45 invalid, void, defective, or not to so conform, or may use a combination
46 of substitution and refund. No other remedy shall be available to a
47 purchaser of a tax lien which is found to be invalid, void, defective,
48 or not to conform to a representation or warranty with respect thereto
49 made by the commissioner of finance in connection with the sale thereof,
50 in whole or in part. Whenever a tax lien of such equivalent value is to
51 be substituted for a tax lien that has been found invalid, void, defec-
52 tive, or not to so conform, in whole or in part, pursuant to this
53 section, the commissioner of finance or his or her designee shall
54 provide mailed notice of the intention to substitute such lien of such
55 equivalent value to any person required to be notified pursuant to
56 section 11-320(b) of this chapter.

1 9. The commissioner of finance may establish requirements for a
2 purchaser of a tax lien to provide any information and documents that
3 the commissioner of finance deems necessary, including information
4 concerning the collection and enforcement of tax liens. The commission-
5 er of finance shall require the purchaser of a tax lien to provide the
6 owner of property on which a tax lien has been sold pursuant to this
7 chapter a detailed itemization of taxes, interest, surcharges, and fees
8 charged to such owner on all tax lien statements of amounts due or bill
9 of charges. Such fees shall be bona fide, reasonable and, in the case of
10 attorneys' fees, customary.

11 10. (i) On and after January first, two thousand twelve, no tax lien
12 shall be sold pursuant to this chapter on any class two residential
13 property owned by a company organized pursuant to article eleven of the
14 private housing finance law that is a residential condominium or resi-
15 dential cooperative. If, notwithstanding the foregoing sentence, any
16 such tax lien is sold in error pursuant to this chapter on and after
17 January first, two thousand twelve on such property, then the provisions
18 of paragraph eight of this subdivision shall apply to such sale, includ-
19 ing the authority of the commissioner of finance to substitute for such
20 tax lien another tax lien that has a value equivalent to the value of
21 such tax lien or to refund the value of such tax lien. For the purposes
22 of this paragraph, property owned by such company shall be limited to
23 property owned for the purpose, as set forth in section five hundred
24 seventy-one of the private housing finance law, of providing housing for
25 families and persons of low income.

26 (ii) No later than May first, two thousand eleven, the commissioner of
27 finance, in consultation with the commissioner of housing preservation
28 and development, shall notify by mail any class two residential property
29 owned by a company organized pursuant to article eleven of the private
30 housing finance law that is not a residential condominium or residential
31 cooperative, of the authority of the commissioner of finance to sell the
32 tax liens on such property. Such notification shall include information
33 relating to the lien sale process, including, but not limited to,
34 actions homeowners can take if a lien is sold on such property; the type
35 of debt that can be sold in a lien sale; a timeline of statutory notifi-
36 cations required pursuant to section 11-320 of this chapter; a clear,
37 concise explanation of the consequences of the sale of a tax lien; the
38 telephone number and electronic mail address of the employee or employ-
39 ees designated pursuant to subdivision f of section 11-320 of this chap-
40 ter; a conspicuous statement that the owner of the property may enter
41 into a payment plan for exclusion from the tax lien sale; and credits
42 and property tax exemptions that may exclude a property from a tax lien
43 sale and any other credit or residential real property tax exemption
44 information, which, in the discretion of the commissioner of finance,
45 should be included in such notification.

46 Upon such property owner's written request, or verbal request to 311
47 or any employee designated pursuant to subdivision f of section 11-320
48 of this chapter, a Chinese, Korean, Russian or Spanish translation of
49 such notice shall be provided promptly to such property owner.

50 11. No later than the first of September in the year next succeeding
51 the effective date of this section, the appropriate agency shall promul-
52 gate rules identifying or describing any existing procedures governing
53 challenges to the validity of any real property tax, sewer rent, sewer
54 surcharge, water rent, emergency repair charge or alternative enforce-
55 ment expense or fee.

1 12. On or after January first, two thousand fifteen and before January
2 first, two thousand seventeen, no tax lien shall be sold pursuant to
3 this chapter on the following properties: (i) properties enrolled in the
4 city's Build It Back Program; and (ii) properties defined as "eligible
5 real property" pursuant to subdivision three of section four hundred
6 sixty-seven-g of the real property tax law. If, notwithstanding the
7 foregoing sentence, any such tax lien is sold in error pursuant to this
8 chapter during such time period on properties described in subparagraph
9 (i) or (ii) of this paragraph, then the provisions of paragraph eight of
10 this subdivision shall apply to such sale, including the authority of
11 the commissioner of finance to substitute for such tax lien another tax
12 lien that has a value equivalent to the value of such tax lien or to
13 refund the value of such lien.

14 13. Notwithstanding any provision of this chapter to the contrary, no
15 tax lien shall be sold pursuant to this chapter on any of the following
16 properties: (i) any real property for which the owner in good faith has
17 submitted an application that is pending with the department of finance
18 for a real property tax exemption pursuant to section four hundred twenty-
19 ty-a, four hundred twenty-b, four hundred forty-six, or four hundred
20 sixty-two of the real property tax law; and (ii) any real property for
21 which the owner has in good faith filed an appeal with the tax commis-
22 sion of a denial of any such application and such appeal is pending.
23 There shall be a rebuttable presumption that an application or an appeal
24 referenced in the preceding sentence was not submitted in good faith
25 where, within the twenty-four months preceding the submission of such
26 application or such appeal, the period for the filing of an appeal of a
27 denial by the department of finance of a previous application for a real
28 property tax exemption pursuant to section four hundred twenty-a, four
29 hundred twenty-b, four hundred forty-six, or four hundred sixty-two of
30 the real property tax law has expired.

31 § 11-320 Notice of sale to be advertised and mailed. a. 1. The tax
32 lien on property in the city shall not be sold pursuant to section
33 11-319 of this chapter unless notice of such sale as provided herein has
34 been published twice, the first publication to be in a newspaper of
35 general circulation in the city, not less than ninety days preceding the
36 date of the sale, and the second publication to be in a publication
37 designated by the commissioner of finance, not less than ten days
38 preceding the date of the sale. Such publication shall include a
39 description by block and lot or by such other identification as the
40 commissioner of finance may deem appropriate, of the property upon which
41 the tax lien exists that may be included in the sale, and a statement
42 that a list of the tax liens that may be included in the sale is avail-
43 able for inspection in the office of the city register and the office of
44 the county clerk. The commissioner of finance shall file such list in
45 the office of the city register and the office of the county clerk not
46 less than ninety days prior to the date of sale.

47 2. Not less than ninety days preceding the date of the sale, the
48 commissioner of finance shall post online, to the extent such informa-
49 tion is available, the borough, block and lot of any property on which a
50 lien has been or will be noticed for sale in accordance with paragraph
51 one of this subdivision and that, in one or more of the five fiscal
52 years preceding the date of the sale, was in receipt of a real property
53 tax exemption pursuant to section four hundred twenty-a, four hundred
54 twenty-b, four hundred forty-six or four hundred sixty-two of the real
55 property tax law and, in addition, shall post online, to the extent such
56 information is available, the borough, block and lot of any vacant land

1 classified as class one or class four pursuant to section eighteen
2 hundred two of the real property tax law on which a lien has been or
3 will be noticed for sale in accordance with paragraph one of this subdi-
4 vision. Any failure to comply with this paragraph shall not affect the
5 validity of any sale of tax liens pursuant to this chapter.

6 b. 1. A tax lien shall not be sold unless the commissioner of finance,
7 or his or her designee, notifies the owner of record at the address of
8 record and any other person who has registered pursuant to section
9 11-309 of this chapter, or pursuant to section 11-416 or 11-417 of this
10 title, by first class mail, of the intention to sell the tax lien. If no
11 such registrations have been filed then such commissioner, or his or her
12 designee, shall notify the person whose name and address, if any,
13 appears in the latest annual record of assessed valuations, by first
14 class mail, of the intention to sell the tax lien. Such mailed notice
15 shall include a description of the property by block and lot and such
16 other identifying information as the commissioner of finance may deem
17 appropriate, the amount of the tax lien, including all taxes, assess-
18 ments, sewer rents, sewer surcharges, water rents, any other charges
19 that are made a lien subject to the provisions of this chapter, as well
20 as an estimate of the costs of any advertisements and notices given
21 pursuant to this chapter, any other charges that are due and payable on
22 the date specified in such publication, a surcharge pursuant to section
23 11-332 of this chapter if the tax lien is sold, and interest and penal-
24 ties thereon, and shall be mailed to such owner and such other persons
25 four times: not less than ninety, sixty, thirty and ten days prior to
26 the date of sale. Such notice shall state that if default continues to
27 be made in payment of the amounts due on such property, the tax lien on
28 such property shall be sold as provided in section 11-319 of this chap-
29 ter. If, notwithstanding such notice, the owner shall continue to refuse
30 or neglect to pay the amounts due on such property, the commissioner of
31 finance may sell the tax lien on such property as provided in section
32 11-319 of this chapter.

33 2. (i) Such notices shall also include, with respect to any property
34 owner in class one or class two, as such classes of property are defined
35 in subdivision one of section eighteen hundred two of the real property
36 tax law, an exemption eligibility checklist. The exemption eligibility
37 checklist shall also be posted on the website of the department of
38 finance no later than the first business day after March fifteenth of
39 every year prior to the date of sale, and shall continue to be posted on
40 such website until ten days prior to the date of sale. Within ten busi-
41 ness days of receipt of a completed exemption eligibility checklist from
42 such property owner, provided that such receipt occurs prior to the date
43 of sale of any tax lien or tax liens on his or her property, the depart-
44 ment of finance shall review such checklist to determine, based on the
45 information provided by the property owner, whether such property owner
46 could be eligible for any exemption, credit or other benefit that would
47 entitle them to be excluded from a tax lien sale and, if the department
48 determines that such property owner could be eligible for any such
49 exemption, credit or other benefit, shall mail such property owner an
50 application for the appropriate exemption, credit or other benefit. If,
51 within twenty business days of the date the department mailed such
52 application, the department of finance has not received a completed
53 application from such property owner, such department shall mail such
54 property owner a second application, and shall telephone the property
55 owner, if the property owner has included his or her telephone number on
56 the exemption eligibility checklist.

1 (ii) Any such property owner who returns to the department of finance
2 a completed exemption eligibility checklist prior to the date of sale of
3 any tax lien or tax liens on his or her property and who subsequently
4 submits a completed application for the appropriate exemption, credit or
5 other benefit either prior to, on or up to ninety days after such sale,
6 shall have his or her application reviewed by the department of finance.
7 If, prior to the date of sale, the department of finance determines that
8 such property owner is qualified for such exemption, credit or other
9 benefit or will be qualified as of the date of sale, then the tax lien
10 or tax liens on his or her property shall not be sold on such date. If,
11 on or after the date of sale, the department of finance determines that
12 such property owner is or was qualified for such exemption, credit or
13 other benefit as of the date of sale, then any tax lien or tax liens on
14 his or her property that were sold shall be deemed defective.

15 (iii) Not later than thirty days prior to such date of sale, the
16 department of finance shall submit to the council a list, disaggregated
17 by council district, of all properties for which property owners
18 returned a completed eligibility checklist to the department of finance
19 at least thirty-five days prior to the date of sale, but for which prop-
20 erty owners have not yet submitted a completed application for the
21 appropriate exemption, credit or other benefit.

22 (iv) Not later than thirty days after such date of sale, the depart-
23 ment of finance shall submit to the council a list, disaggregated by
24 council district, of all properties for which property owners returned a
25 completed eligibility checklist to the department of finance prior to
26 the date of sale, but for which property owners have not yet submitted a
27 completed application for the appropriate exemption, credit or other
28 benefit.

29 (v) Upon the written or verbal request of such property owner, the
30 department of finance shall provide prompt assistance to such property
31 owner in completing an application for the appropriate exemption, credit
32 or other benefit.

33 2-a. If, prior to the date of sale, the department of finance confirms
34 that a property is the subject of (i) a judicial proceeding or (ii) an
35 investigation or a prosecution by any agency or office of the United
36 States or any state or subdivision thereof with regard to the ownership
37 of such property arising from the fraudulent transmittal of a deed
38 relating to such property, such department shall remove such property
39 from the sale, provided that the owner of such property has provided an
40 affidavit to such department and any such other documentation required
41 by such department to establish that such property is the subject of
42 such a proceeding, investigation or prosecution. Any such removal shall
43 relate only to the sale of a tax lien or tax liens for which the owner
44 has received notice pursuant to paragraph one of subdivision b of this
45 section. Failure by the department of finance to remove such property
46 shall not affect the validity of any sale of tax liens pursuant to this
47 chapter.

48 3. The notice provided not less than ninety days prior to the date of
49 sale shall also include information relating to the lien sale process,
50 including, but not limited to, actions homeowners can take if a lien is
51 sold on such property; the type of debt that can be sold in a lien sale;
52 a timeline of statutory notifications required pursuant to this section;
53 a clear, concise explanation of the consequences of the sale of a tax
54 lien; the telephone number and electronic mail address of the employee
55 or employees designated pursuant to subdivision f of this section; a
56 conspicuous statement that the owner of the property may enter into a

1 payment plan for exclusion from the tax lien sale; and credits and prop-
2 erty tax exemptions that may exclude certain class one real property
3 from a tax lien sale. Such notice shall also include information on the
4 following real property tax exemptions, credits or other benefits:

5 (i) the senior citizen homeowner exemption pursuant to section
6 11-245.3 of this title;

7 (ii) the exemption for persons with disabilities pursuant to section
8 11-245.4 of this title;

9 (iii) the exemption for veterans pursuant to section four hundred
10 fifty-eight of the real property tax law, with respect to real property
11 purchased with payments received as prisoner of war compensation from
12 the United States government;

13 (iv) the exemption for veterans pursuant to paragraph (b) or (c) of
14 subdivision two of section four hundred fifty-eight-a of the real prop-
15 erty tax law;

16 (v) the state circuit breaker income tax credit pursuant to subsection
17 (e) of section six hundred six of the tax law; and

18 (vi) the active duty military personnel benefit pursuant to department
19 of finance memorandum 05-3, or any successor memorandum thereto.

20 Upon such property owner's written request, or verbal request to 311
21 or any employee designated pursuant to subdivision f of this section, a
22 Chinese, Korean, Russian or Spanish translation of such notice shall be
23 provided promptly to such property owner.

24 4. Such notice shall also include, with respect to a property that was
25 in receipt of a real property tax exemption pursuant to section four
26 hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four
27 hundred sixty-two of the real property tax law in one or more of the
28 three fiscal years preceding the date of the notice provided not less
29 than ninety days prior to the date of sale, or with respect to a proper-
30 ty in class four, as such class of property is defined in subdivision
31 one of section eighteen hundred two of the real property tax law, infor-
32 mation relating to the initial application and renewal process for such
33 property tax exemptions, and other actions available to the owner of
34 such property in the event such property is noticed for sale pursuant to
35 this subdivision, including, if available, an adjustment or cancellation
36 of back taxes. Upon request of the owner of such property, a translation
37 of such notice in any of the top ten languages most commonly spoken
38 within the city as determined by the department of city planning shall
39 be provided to such owner.

40 5. The department of finance and the department of environmental
41 protection shall, to the extent practicable, contact by telephone or
42 electronic mail any person who (i) has registered their telephone number
43 or electronic mail address with such departments and (ii) has received
44 the ninety-day notice described in paragraph one of this subdivision.
45 Any such contact shall be made within a time period reasonably proximate
46 to the mailing of such notice, shall inform such person of the intention
47 to sell a tax lien and shall provide such other information as the
48 respective commissioner deems appropriate, which may include, but need
49 not be limited to, the telephone numbers and electronic mail addresses
50 of the employees designated pursuant to subdivision f of this section.
51 The department of finance shall contact by electronic mail any person
52 who has registered pursuant to subdivision a of section 11-245.8 of this
53 title to receive information about the outreach sessions described in
54 subdivision j of this section and provide such information within a time
55 period reasonably proximate to the scheduled outreach session. Failure
56 by the department of finance or the department of environmental

1 protection to contact any such person by telephone or electronic mail
2 shall not affect the validity of any sale of tax liens pursuant to this
3 chapter.

4 c. Such notices shall advise the owner of such property of his or her
5 continued obligation to pay the amounts due on such property. No other
6 notices or demands shall be required to be made to the owner of such
7 property to authorize the sale of a tax lien or tax liens on such prop-
8 erty pursuant to section 11-319 of this chapter.

9 c-1. Where a tax lien on property in the city has been noticed for
10 sale pursuant to subdivision b of this section and such lien, prior to
11 the date of sale, has been paid or is otherwise determined by the
12 commissioner of finance not to be eligible to be sold, such commissioner
13 shall promptly provide written notification to the owner of such proper-
14 ty that such lien will not be or was not included in such sale and the
15 reason therefor.

16 d. 1. The commissioner of finance or his or her designee shall, within
17 ninety days after the delivery of the tax lien certificate, notify any
18 person who was required to be notified of such sale pursuant to subdivi-
19 sion (b) of section 11-320 of this chapter, by first class mail, that
20 such sale has occurred. Such notice shall state the date of the sale of
21 the tax lien, the name and address of the purchaser of the tax lien, the
22 amount of such lien, a description of the property by block and lot and
23 such other identifying information as the commissioner of finance or his
24 or her designee shall deem appropriate, and the terms and conditions of
25 the tax lien certificate, including the right to satisfy the lien within
26 the time periods specified in this chapter. Such notice shall also
27 include the telephone number and electronic mail address of the employee
28 or employees designated pursuant to subdivision f of this section.

29 2. Any written communication from the purchaser of the tax lien or
30 liens to an owner of property, on which a tax lien has been sold pursu-
31 ant to the provisions of this chapter, shall include the following
32 information:

33 (i) an explanation of the roles of the purchaser of the tax lien and
34 the employee or employees designated pursuant to subdivision f of this
35 section;

36 (ii) the names and contact information, including the telephone
37 number, electronic mail and mailing addresses of such persons; and

38 (iii) a statement informing such owner that he or she may be eligible
39 to enter into a forbearance agreement with the purchaser of such tax
40 lien.

41 3. The requirement to send such written communication shall be subject
42 to federal, state and local debt collection laws.

43 4. Failure to provide notice pursuant to this subdivision shall not
44 affect the validity of any sale of a tax lien or tax liens pursuant to
45 this chapter.

46 e. The words "date of sale" when used in this section shall mean:

47 (1) for a negotiated sale, the date of signing of the tax lien
48 purchase agreement, and (2) for a competitive sale, the date designated
49 by the commissioner of finance for the submission of bids.

50 f. The commissioner of finance shall designate an employee of the
51 department to respond to inquiries from owners of property for which a
52 tax lien has been sold or noticed for sale pursuant to subdivision a of
53 this section and shall designate an employee of the department to
54 respond to inquiries from owners sixty-five years of age or older of
55 property for which a tax lien has been sold or noticed for sale pursuant
56 to subdivision a of this section. The commissioner of environmental

1 protection shall designate at least one employee of the department of
2 environmental protection to respond to inquiries from owners of property
3 for which a tax lien containing a water rents, sewer rents or sewer
4 surcharges component has been sold or noticed for sale pursuant to
5 subdivision a of this section. The telephone numbers and electronic mail
6 addresses of employees designated pursuant to this subdivision shall be
7 posted online and shall be included on all publications and notices
8 required by subdivisions a and b of this section. Failure to include
9 such numbers and addresses on all such publications and notices shall
10 not affect the validity of any sale of tax liens pursuant to this chap-
11 ter.

12 g. No later than one hundred twenty days after the tax lien sale, the
13 commissioner of finance shall submit to the council a list of all prop-
14 erties, identified by block and lot, noticed for sale pursuant to subdivi-
15 sion b of this section. Such list shall also include a description of
16 the disposition of such properties that shall include, but not be limit-
17 ed to, whether an owner entered into a payment plan with the city pursu-
18 ant to section 11-322 or 11-322.1 of this chapter, whether an owner
19 satisfied the tax lien or liens, whether ownership of the property was
20 transferred, provided that such information is available to the city, or
21 whether the property was distressed, as defined in subdivision four of
22 section 11-401 of this title, or removed from the sale pursuant to the
23 discretion of the commissioner of housing preservation and development.

24 h. 1. On a quarterly basis, a purchaser of tax liens shall provide to
25 the council a list of all properties on which tax liens have been sold
26 where, subsequent to such sale, there has been a transfer of ownership
27 of the property, provided that a purchaser of tax liens has knowledge of
28 such transfers, for the following groups:

29 (i) all properties on which liens for emergency repair charges or
30 alternative enforcement expenses and fees have been sold to such
31 purchaser pursuant to subdivision a-4 of section 11-319 of this chapter;
32 and

33 (ii) all class two residential property owned by a company organized
34 pursuant to article eleven of the private housing finance law that is
35 not a residential condominium or a residential cooperative on which any
36 tax lien has been sold pursuant to subdivision a, a-2 or a-4 of section
37 11-319 of this chapter.

38 2. When available, a purchaser of tax liens shall include the names
39 and contact information of the new owners of record of such properties.

40 i. On a quarterly basis, a purchaser of tax liens shall provide to the
41 council a property status report. For each property, such report shall
42 include: (1) information about such property, including property tax
43 class; property type; description of the tax lien or tax liens that have
44 been sold to such purchaser on such property pursuant to this chapter,
45 including the amount of the tax lien or tax liens, the costs of any
46 advertisements and notices given pursuant to this chapter; the amount of
47 the surcharge pursuant to section 11-332 of this chapter; and the amount
48 of interest and penalties thereon; and (2) the status of the tax lien or
49 tax liens, including foreclosure information, if applicable; whether the
50 property owner entered into an installment agreement; whether the prop-
51 erty owner is current on such installment agreement; and whether the tax
52 lien or tax liens on such property have been deemed defective, and, if
53 so, the reason any such lien or liens were deemed defective. Each prop-
54 erty listed in the report shall be identified by block and lot.

55 j. (1) At the request of a council member, the commissioner of
56 finance, in consultation with the commissioner of housing preservation

1 and development and the commissioner of environmental protection, may
2 conduct outreach sessions in the district of such council member,
3 provided, however, that, the commissioner of finance shall conduct such
4 outreach sessions in the ten council districts with the greatest number
5 of properties for which a notice of intention to sell a tax lien has
6 been mailed ninety days prior to the date of sale pursuant to paragraph
7 one of subdivision b of this section, and provided, further, however,
8 that, such commissioner shall conduct additional outreach sessions in
9 the five council districts with the greatest number of properties for
10 which a notice of intention to sell a tax lien has been mailed ninety
11 days prior to the date of sale pursuant to such paragraph. To the extent
12 practicable, the commissioner of finance shall schedule the outreach
13 sessions in the five council districts described in the preceding
14 sentence such that one occurs prior to the mailing of the notice of
15 intention to sell a tax lien that is required to be mailed thirty days
16 prior to the date of sale pursuant to paragraph one of subdivision b of
17 this section and one occurs subsequent to such mailing. The scope of
18 such outreach sessions shall include, but need not be limited to, (i)
19 actions property owners can take if a lien is sold on such property;
20 (ii) the type of tax lien or tax liens that can be sold in a tax lien
21 sale; (iii) installment agreement information, including informing
22 attendees in such outreach sessions of their option to enter into an
23 installment agreement for exclusion from the tax lien sale with no down
24 payment, with options for income-based installment agreements or
25 installment agreements with a term of up to ten years; (iv) credits and
26 property tax exemptions that may exclude a property from a tax lien
27 sale; (v) distribution of a customer survey to property owners who have
28 received notice of the intention to sell a tax lien on their property,
29 in order to determine the circumstances that led to the creation of the
30 lien; and (vi) any other credit or residential real property tax
31 exemption information, which, in the discretion of the commissioner of
32 finance, should be included in such outreach sessions. (2) The commis-
33 sioner of finance shall make a good faith effort to have a financial
34 counselor available at such outreach sessions. No later than ninety days
35 after the tax lien sale, the commissioner of finance shall submit to the
36 council a report on the number of outreach sessions performed in each
37 council district during the ninety-day period preceding the tax lien
38 sale. Such report shall include: (i) the number of installment agree-
39 ments begun by property owners or, as defined in subdivision b of
40 section 11-322 of this chapter, other eligible persons acting on behalf
41 of property owners at each outreach session; (ii) the number of property
42 tax exemption applications begun at each outreach session; (iii) the
43 total number of attendees at each outreach session; (iv) the number of
44 outreach sessions at which a financial counselor was available; (v) the
45 number of property owners, or other eligible persons acting on behalf of
46 property owners, who consulted a financial counselor at each outreach
47 session at which a financial counselor was available; and (vi) the
48 results of such surveys. Such report and the results of each outreach
49 session shall be disaggregated by council district.

50 k. The commissioner of finance shall post online the information
51 reported to the council pursuant to subdivisions h and i of this
52 section, provided that no information shall be posted online that
53 specifically identifies any property or property owner, except by zip
54 code and a randomly generated identifier.

55 § 11-321 Continuation of sale; notice required. A sale of a tax lien
56 or tax liens may be continued from time to time, if necessary, until all

1 the tax liens on the property so advertised and noticed shall be sold
2 unless such sale is canceled or postponed in accordance with section
3 11-322 or 11-322.1 of this chapter. If a sale of a tax lien or tax liens
4 is continued, the commissioner of finance, or his or her designee, shall
5 give such notice as is practicable of such continuation.

6 § 11-322 Postponement or cancellation of sales; installment agree-
7 ments. a. It shall be lawful for the commissioner of finance, or his or
8 her designee, to postpone or cancel any proposed sale of a tax lien or
9 tax liens on property that shall have been advertised and noticed for
10 sale prior to the date of sale. For purposes of this section, the words
11 "date of sale" shall have the same meaning provided in subdivision e of
12 section 11-320 of this chapter. The city shall not be liable for any
13 damages as a result of cancellation or postponement of a proposed sale
14 of a tax lien or tax liens, nor shall any cause of action arise from
15 such cancellation or postponement.

16 b. In accordance with rules promulgated by the commissioners of
17 finance and environmental protection, a property owner, or other eligi-
18 ble person, as defined by rule, acting on behalf of an owner, may enter
19 into agreements with the departments of finance and environmental
20 protection for the payment in installments of any delinquent real prop-
21 erty taxes, assessments, sewer rents, sewer surcharges, water rents, or
22 any other charges that are made a lien subject to the provisions of this
23 chapter. The proposed sale of a tax lien or tax liens on property shall
24 be cancelled when a property owner, or other eligible person acting on
25 behalf of an owner, enters into an agreement with the respective agency
26 for the payment of any such lien. Such rules shall also provide that
27 such property owners or such other eligible persons be given information
28 regarding eligibility for real property tax exemption programs prior to
29 entering into such agreements. As used in this subdivision, the term
30 "other eligible person" shall include a fiduciary, as defined in para-
31 graph three of subdivision (a) of section 11-1.1 of the estates, powers
32 and trusts law, acting with respect to the administration of the proper-
33 ty of an estate of a decedent who owned the real property as to which an
34 agreement under this subdivision is sought, or on behalf of a benefici-
35 ary of such real property from such estate. Any rules promulgated in
36 accordance with this subdivision defining "other eligible person" shall
37 include in such definition the means by which a beneficiary of real
38 property of the estate of a decedent who owned real property as to which
39 an agreement under this subdivision is sought meets the definition of
40 "other eligible person". Such means shall include the furnishing of any
41 death certificates or other relevant documents that substantiate the
42 claim of a beneficiary that they are the legal owner of the property.
43 Notwithstanding any other provision of this section, no more than one
44 such agreement with each respective agency may be in effect for a prop-
45 erty at any one time.

46 1. If payments required from a property owner, or other eligible
47 person acting on behalf of an owner, pursuant to such an agreement are
48 not made for a period of six months, such property owner, or such other
49 eligible person, shall be in default of such agreement, and the tax lien
50 or tax liens on the subject property may be sold, provided, however,
51 that such default may be cured upon such property owner's, or such other
52 eligible person's, bringing all installment payments and all current
53 charges that are outstanding at the time of the default to a current
54 status, which shall include, but not be limited to, any outstanding
55 interest and fees, prior to the date of sale, provided, however, that
56 such property owner, or such other eligible person, may elect to cure

1 such default by entering into a new installment agreement with a down
2 payment of twenty percent or more, of all delinquent real property
3 taxes, assessments, sewer rents, sewer surcharges, water rents and other
4 charges that are made a lien subject to the provisions of this chapter,
5 including any outstanding interest and fees, prior to the date of sale.
6 If such default is not cured prior to the date of sale, such property
7 owner, and any other eligible person acting on behalf of an owner, shall
8 not be eligible to enter into an installment agreement for the subject
9 property for five years, unless there is a finding of extenuating
10 circumstances by the department that entered into the installment agree-
11 ment with the property owner or such other eligible person. Notwith-
12 standing the prohibition against entering into an installment agreement
13 for the subject property for five years, a property owner, or such other
14 eligible person, who has defaulted on an installment agreement and whose
15 lien has been sold and, subsequent to the sale of the lien, whose prop-
16 erty on which the lien was sold is subject to another tax lien that is
17 eligible to be sold, may elect to enter into another installment agree-
18 ment with respect to such other lien before the end of such five-year
19 period, provided that such property owner, or such other eligible
20 person, makes a down payment of twenty percent or more, of all delin-
21 quent real property taxes, assessments, sewer rents, sewer surcharges,
22 water rents and other charges that are made a lien subject to the
23 provisions of this chapter, including any outstanding interest and fees,
24 prior to the date of the sale. No such property owner, or such other
25 eligible person, may make the election that is authorized pursuant to
26 this paragraph to enter into an installment agreement with a down
27 payment more than once for the subject property. The standards relating
28 to defaults and cures of defaults of installment agreements set forth in
29 this paragraph apply to installment agreements entered into pursuant to
30 such election.

31 2. An installment agreement shall provide for payments by the property
32 owner, or other eligible person acting on behalf of an owner, on a quar-
33 terly or monthly basis, for a period not less than eight years and not
34 more than ten years, provided that a property owner, or other eligible
35 person acting on behalf of an owner, may elect a period less than eight
36 years. Except as provided in paragraph one of this subdivision, there
37 shall be no down payment required upon the property owner's, or such
38 other eligible person's, entering into the installment agreement with
39 the respective department, but the property owner, or other eligible
40 person acting on behalf of an owner, may elect to make a down payment.
41 With respect to installment agreements with the commissioner of environ-
42 mental protection, the determination of whether payments shall be on a
43 quarterly or monthly basis shall be in the discretion of such commis-
44 sioner, except as provided in paragraph three of this subdivision. With
45 respect to installment agreements with the commissioner of finance, the
46 determination of whether payments shall be on a quarterly or monthly
47 basis shall be in the discretion of the property owner, or other eligi-
48 ble person acting on behalf of an owner.

49 3. Beginning on January first, two thousand twelve, any property owner
50 who has entered into an installment agreement with the commissioner of
51 environmental protection pursuant to this subdivision and who has auto-
52 mated meter reading shall receive a consolidated monthly bill for
53 current sewer rents, sewer surcharges and water rents and any payment
54 due under such installment agreement.

55 4. No later than September first, two thousand eleven, the commission-
56 ers of finance and environmental protection shall promulgate rules

1 governing installment agreements, including but not limited to, the
2 terms and conditions of such agreements, the payment schedules, and the
3 definition and consequences of default; no later than June first, two
4 thousand fourteen, the commissioners of finance and environmental
5 protection shall promulgate rules governing eligibility of owners or
6 other eligible persons acting on behalf of owners to enter into install-
7 ment agreements.

8 5. All installment agreements executed on or after March first, two
9 thousand fifteen shall include a conspicuous statement that if payments
10 required from a property owner pursuant to such an agreement are not
11 made for a period of six months, such property owner shall be in default
12 of such agreement, and the tax lien or tax liens on the subject property
13 may be sold, provided, however, that such default may be cured upon such
14 property owner's bringing all installment payments and all current
15 charges that are outstanding at the time of the default to a current
16 status, which shall include, but not be limited to, any outstanding
17 interest and fees, prior to the date of sale. Such statement shall also
18 include a notification that if such default is not cured prior to the
19 date of sale, such property owner shall not be eligible to enter into an
20 installment agreement for the subject property for five years, unless
21 there is a finding of extenuating circumstances in accordance with rules
22 promulgated by the department that entered into the installment agree-
23 ment with the property owner. Such statement shall include the defi-
24 nition of extenuating circumstances. All installment agreements shall
25 also include a statement describing the conditions under which the prop-
26 erty owner, or any other eligible person acting on behalf of an owner,
27 may be eligible, after default, to enter into another installment agree-
28 ment after such default, in accordance with paragraph one of this subdivi-
29 sion.

30 6. If a property owner, or other eligible person acting on behalf of
31 an owner, who has entered into an installment agreement with the depart-
32 ment of finance, fails to make a payment pursuant to such agreement,
33 then the department of finance shall, after the first missed payment,
34 mail a letter to the property owner, or other eligible person acting on
35 behalf of an owner, stating that such owner, or other eligible person,
36 is at risk of being in default of such agreement. The letter shall be
37 mailed after the first missed payment if the department has not received
38 payment within two weeks of the due date.

39 c. No later than January thirty-first, two thousand twenty-four, and
40 no later than every January thirty-first thereafter, the department of
41 finance shall submit a report to the mayor and to the speaker of the
42 council on real property with an assessed value of two hundred fifty
43 thousand dollars or less for which: (A) the owner of such real property
44 has entered into an agreement pursuant to this section for the payment
45 in installments of real property taxes, assessments or other charges
46 that are made a lien subject to the provisions of chapter three of this
47 title other than water rents, sewer rents, or sewer surcharges; and (B)
48 such unpaid taxes are subject to the interest rate described in subdivi-
49 sion e of section 11-313 of this chapter for the preceding calendar
50 year, including, but not limited to the following data:

51 1. the number of such agreements executed during the preceding calen-
52 dar year;

53 2. the number of such agreements that were in effect on December thir-
54 ty-first of the preceding calendar year;

1 3. the number of applications for such agreements that were received
2 during the preceding calendar year, and the number of such applications
3 that were not approved;

4 4. the average amount of property taxes and charges subject to such
5 agreements; and

6 5. the number of such agreements that entered into default and the
7 number of defaults that were cured.

8 § 11-322.1 Hardship installment agreements. a. Definitions. For
9 purposes of this section, the following terms have the following mean-
10 ings:

11 1. Applicant. The term "applicant" means a property owner who files an
12 application for an installment agreement under this section. Such term
13 includes a property owner who has entered into an installment agreement
14 after filing such an application.

15 2. Default. The term "default" means that an installment payment
16 required under the installment agreement entered into under this section
17 remains unpaid in whole or in part for six months from the date payment
18 is required to be made, or any other tax or charge that becomes due on
19 the property during the term of such agreement remains unpaid in whole
20 or in part for six months.

21 3. Department. The term "department" means the department of finance.

22 4. Dwelling unit. The term "dwelling unit" means a unit in a condomin-
23 ium used primarily for residential purposes.

24 5. Fair market value. The term "fair market value" means the fair
25 market value of property as determined by the department or the fair
26 market value as determined by an appraisal obtained by the applicant
27 pursuant to paragraph four of subdivision g of this section, provided
28 that such appraisal shall be subject to review, and may be rejected, by
29 the department.

30 6. Income. The term "income" means the adjusted gross income for
31 federal income tax purposes as reported on an applicant's federal or
32 state income tax return for the applicable income tax year, subject to
33 any subsequent amendments or revisions; provided that if no such return
34 was filed for the applicable income tax year, "income" means the
35 adjusted gross income that would have been so reported if such a return
36 had been filed.

37 7. Income tax year. The term "income tax year" means the most recent
38 calendar year or fiscal year for which an applicant filed a federal or
39 state income tax return.

40 8. Net equity. The term "net equity" means the fair market value of
41 property minus any liabilities outstanding against such property, such
42 as mortgages, outstanding property taxes, water and sewer charges, and
43 any other liens on such property.

44 9. Property. The term "property" means real property classified as
45 class one pursuant to section eighteen hundred two of the real property
46 tax law or a dwelling unit in a condominium.

47 10. Property owner. The term "property owner" means an owner of real
48 property classified as class one pursuant to section eighteen hundred
49 two of the real property tax law or of a dwelling unit in a condominium,
50 or other eligible person, as defined in subdivision (i) of section 40-03
51 of title nineteen of the rules of the city of New York, acting on behalf
52 of such owner.

53 b. A property owner who satisfies the requirements described in subdivi-
54 sion c and d, e or f of this section may enter into an agreement with
55 the department pursuant to this section for the payment in installments
56 of real property taxes, assessments or other charges that are made a

1 lien subject to the provisions of this chapter, except for sewer rents,
2 sewer surcharges or water rents. The entry into an installment agreement
3 pursuant to this section shall not suspend the accrual of interest
4 charged against the property pursuant to section 11-301 of this chapter.
5 A property owner may only have one installment agreement with the
6 department in effect at any one time.

7 c. Eligibility requirements for an installment agreement under this
8 section. To be eligible to enter into an installment agreement pursuant
9 to this section, an applicant must demonstrate that the following
10 requirements are met:

11 1. The applicant is a property owner.

12 2. The property shall have been the primary residence of the applicant
13 for an uninterrupted period of not less than one year immediately
14 preceding the date the application for the installment agreement is
15 submitted and continues to be the primary residence of the applicant
16 through the date the installment agreement is entered into. Hospitali-
17 zation or a temporary stay in a nursing home or rehabilitation facility
18 for a period of not more than three years shall not be considered a
19 change in primary residence.

20 3. The combined income of the applicant and of all the additional
21 property owners may not exceed eighty-six thousand four hundred dollars
22 for the income tax year immediately preceding the date of the applica-
23 tion for the installment agreement. The department shall promulgate
24 rules that establish a process for an applicant to seek an exception
25 from the requirement that income information from all additional proper-
26 ty owners be provided in cases of hardship.

27 d. Eligibility requirement for senior low-income installment agree-
28 ment. In addition to the requirements set forth in subdivision c of this
29 section, to be eligible to enter into a senior low-income installment
30 agreement pursuant to subdivision l of this section, an applicant must
31 be sixty-five years of age or older when the application is submitted.

32 e. Eligibility requirement for fixed length income-based installment
33 agreement. To be eligible to enter into a fixed length income-based
34 installment agreement pursuant to subdivision m of this section, an
35 applicant must satisfy the requirements set forth in subdivision c of
36 this section.

37 f. Eligibility requirements for extenuating circumstances income-based
38 installment agreement. In addition to the requirements set forth in
39 subdivision c of this section, for an applicant to be eligible to enter
40 into an extenuating circumstances income-based installment agreement
41 pursuant to subdivision n of this section, the department must make a
42 finding of extenuating circumstances pursuant to the process described
43 in paragraph four of subdivision (e) of section 40-03 of title nineteen
44 of the rules of the city of New York.

45 g. Initial application procedure. 1. An initial application for an
46 installment agreement under this section shall include:

47 (a) for installment agreements that provide for the payment of taxes
48 and charges that will accrue after the date of the installment agree-
49 ment, a title search identifying all mortgages and other liens on the
50 property; and

51 (b) the signature of a primary resident of the property, and if such
52 primary resident does not hold an ownership interest of at least fifty
53 percent in the subject property, the signature of any other owner of the
54 property who, in combination with such primary resident, holds an owner-
55 ship interest of at least fifty percent in such property, consenting to
56 the application for an installment agreement.

1 2. A complete application must be submitted to, and approved by, the
2 department.

3 3. An applicant may select a monthly or quarterly payment schedule and
4 may also select the amount that is required to be paid under the appli-
5 cable installment agreement pursuant to the options available pursuant
6 to subdivision l, m or n of this section.

7 4. An applicant who is the property owner of a dwelling unit in a
8 condominium may submit an appraisal obtained by such applicant of the
9 fair market value of such dwelling unit provided that:

10 (a) the valuation date of such appraisal is a date within, and such
11 appraisal shall have been prepared no more than, twelve months prior to
12 submission of an application;

13 (b) the cost of such appraisal shall be borne by such applicant; and

14 (c) the cost of such appraisal may not be included in the amount
15 subject to the installment agreement.

16 h. Renewal. 1. An installment agreement under this section shall
17 terminate unless an applicant files a renewal application each year. At
18 least sixty days before one year from the date such installment agree-
19 ment was entered into or renewed, the department shall mail each appli-
20 cant a renewal application, provided, however, that upon any such
21 renewal application being made by the applicant, any installment agree-
22 ment then in effect with respect to such applicant shall be deemed
23 renewed until such time as the department shall have found such appli-
24 cant to be either eligible or ineligible for the renewal of the install-
25 ment agreement but in no event for more than six additional months.

26 2. To renew an installment agreement under this section, an applicant
27 must submit a renewal application to the department on or before one
28 year from the date such installment agreement was entered into and each
29 year thereafter for which renewal is sought. To be eligible to renew
30 such agreement, an applicant must demonstrate that:

31 (a) the property continues to be the primary residence of such appli-
32 cant and such residence has been uninterrupted since the date the
33 initial installment agreement was entered into; and

34 (b) the combined income of such applicant and of all the additional
35 property owners does not exceed fifty-eight thousand three hundred nine-
36 ty-nine dollars for the income tax year immediately preceding the date
37 of the renewal of such installment agreement, except that an applicant
38 for the renewal of a fixed length income-based installment agreement
39 pursuant to subdivision m of this section is not required to submit
40 income information.

41 i. Effects of installment agreement on tax lien and tax lien sale. 1.
42 The execution of an installment agreement pursuant to this section shall
43 not suspend the accrual of liens, interest and other charges against the
44 property, which continue to accrue in accordance with applicable law.

45 2. A property for which an application has been submitted that
46 contains proof of income and, for a senior low-income installment agree-
47 ment described in subdivision l of this section, proof of age, and that
48 is signed, but is otherwise incomplete, shall be withdrawn from the next
49 tax lien sale. Such property, however, may be included in the tax lien
50 sale subsequent to the next tax lien sale if a completed application is
51 not submitted within forty-five days from the date of the additional
52 information request notice sent to the applicant by the department or if
53 the completed application is denied.

54 j. Amount subject to installment agreement. 1. Each approved install-
55 ment agreement shall set forth terms of repayment, including (a) the
56 frequency of payments, (b) the percentage of the taxes and charges that

1 forms the basis of the required payment for the senior low-income
2 installment agreement described in subdivision l of this section, or the
3 percentage of the combined income of the property owners for the income
4 tax year immediately preceding the initial application that forms the
5 basis of the required payment for the installment agreement for the
6 fixed length income-based and the extenuating circumstances income-based
7 installment agreements described in subdivisions m and n respectively,
8 (c) the payment schedule, and (d) the payment amount.

9 2. A lien sold in a tax lien sale before the date of an application
10 for an installment agreement is not eligible to be included in an
11 installment agreement under this section.

12 3. The applicant may choose to include the cost of the title search
13 required to be submitted with an application pursuant to subparagraph
14 (a) of paragraph one of subdivision g of this section in the amount
15 subject to the installment agreement. If an applicant chooses to include
16 such cost, the applicant may either select a title company to conduct
17 the required search and present documentation to the department of the
18 cost, or direct the department to use a title company selected by the
19 department. The department shall pay the cost of the title search and be
20 reimbursed by the applicant through the addition of the cost to the
21 amount subject to the installment agreement. The applicant shall make
22 such reimbursement in the first year of the installment agreement, in
23 monthly or quarterly payments, consistent with the payment frequency
24 selected for the installment agreement. The cost of the title search
25 shall bear interest at the same rate as the interest on unpaid real
26 property tax as provided in section 11-224.1 of this title.

27 4. (a) Any time the amount of the liens on a property subject to an
28 installment agreement under this section exceeds twenty-five percent of
29 the net equity in such property, the applicant shall pay all taxes and
30 charges imposed against the property that exceed twenty-five percent of
31 the net equity in the property as such taxes and charges become due, in
32 addition to the payment amount set forth in the installment agreement.

33 (b) Notwithstanding subparagraph (a) of this paragraph and provided
34 that section five hundred eighty-one of the real property tax law is in
35 effect in the same form as such section was in effect as of the effec-
36 tive date of this section, for property that is a dwelling unit in a
37 condominium subject to an installment agreement under this section and
38 for which an appraisal has not been obtained pursuant to paragraph four
39 of subdivision g of this section, any time the amount of the liens
40 subject to such agreement exceeds fifty percent of the net equity in
41 such property, the applicant shall pay all taxes and charges imposed
42 against such property that exceed fifty percent of the net equity in
43 such property as such taxes and charges become due, in addition to the
44 payment amount set forth in the installment agreement. For property that
45 is a dwelling unit in a condominium and for which an appraisal has been
46 obtained pursuant to paragraph four of subdivision g of this section,
47 any time the amount of the liens subject to an installment agreement
48 under this section exceeds the higher of (i) fifty percent of the net
49 equity in such property based on the fair market value determined by the
50 department; or (ii) twenty-five percent of the net equity in such prop-
51 erty based on the fair market value determined by the appraisal obtained
52 by the applicant, the applicant shall pay all taxes and charges imposed
53 against such property that exceed the higher of the amounts described by
54 clauses (i) and (ii) of this subparagraph as such taxes and charges
55 become due, in addition to the payment amount set forth in the install-
56 ment agreement.

1 (c) The department shall provide each applicant with a written projec-
2 tion at the time the installment agreement is entered into as to when
3 the twenty-five or fifty percent threshold, as determined pursuant to
4 subparagraphs (a) and (b) of this paragraph, will be exceeded. The
5 department shall also notify each property owner in writing when the
6 amount of the liens exceeds such threshold. Failure by the department to
7 provide an applicant with such projection or to notify a property owner
8 when the amount of the liens exceeds the applicable threshold, however,
9 shall not affect the validity of the installment agreement that has been
10 entered into, nor shall any claim arise or exist against the commission-
11 er of finance or any officer or agency of the city by reason of such
12 failure to provide such projection or such notification.

13 5. If at any time the department determines that the fair market value
14 of a property subject to an installment agreement under this section has
15 increased, an applicant may request that the net equity in such property
16 be recalculated and the net equity amount included in such installment
17 agreement be adjusted to reflect the recalculated net equity in such
18 property.

19 6. If the combined income of all of the property owners exceeds
20 fifty-eight thousand three hundred ninety-nine dollars for the income
21 tax year immediately preceding the date of making a renewal application
22 pursuant to subdivision h of this section, the applicant shall pay all
23 taxes and charges imposed against the property after the date of such
24 renewal application as such taxes and charges become due, in addition to
25 the payment amount set forth in such installment agreement.

26 k. Termination of installment agreement. 1. An installment agreement
27 shall be terminated when any of the following occurs:

28 (a) The property whose liens are the subject of such installment
29 agreement is no longer the primary residence of the applicant. An appli-
30 cant whose installment agreement has been terminated because of such
31 reason may apply to enter into an installment agreement pursuant to
32 section 11-322 of this chapter.

33 (b) The fixed term of the installment agreement expires. An applicant
34 whose installment agreement has been terminated because of such expira-
35 tion may apply to enter into an installment agreement pursuant to
36 section 11-322 of this chapter or to this section.

37 (c) The applicant is deceased.

38 (d) The applicant opts out of an installment agreement without a fixed
39 term as described in paragraph one of subdivision l of this section. An
40 applicant who opts out of such agreement may apply to enter into an
41 installment agreement pursuant to section 11-322 of this chapter or to
42 this section.

43 (e) The applicant does not file a timely renewal application in
44 accordance with the provisions of subdivision h of this section.

45 (f) The applicant is in default and has not cured such default as
46 provided in subparagraph (a) of paragraph three of this subdivision
47 prior to the next tax lien sale.

48 (g) The applicant has defaulted on the installment agreement and has
49 cured such default by entering into a new installment agreement pursuant
50 to clause two or three of subparagraph (a) of paragraph three of this
51 subdivision.

52 2. If an installment agreement is terminated, all taxes and charges
53 that accrued before such termination are required to be paid. If such
54 taxes and charges are not paid within nine months of such termination,
55 the tax lien or tax liens on such property may be sold. Notwithstanding
56 the preceding sentence, if an agreement is terminated pursuant to

1 subparagraph (c) of paragraph one of this subdivision, a surviving
2 spouse has eighteen months from the death of the applicant to pay all
3 taxes and charges on such property before the tax lien or tax liens on
4 such property may be sold. If such surviving spouse is a property owner
5 he or she may enter into a separate installment agreement pursuant to
6 section 11-322 of this chapter or subdivision l, m or n of this section,
7 as long as he or she meets the eligibility requirements for the respec-
8 tive installment agreement.

9 3. (a) An applicant may cure a default by:

10 (i) bringing all installment payments and all current charges, includ-
11 ing but not limited to any interest and fees, that are outstanding at
12 the time of the default to a current status prior to the date of the tax
13 lien sale;

14 (ii) entering into a new installment agreement with a down payment of
15 twenty percent or more, of all delinquent real property taxes, assess-
16 ments, sewer rents, sewer surcharges, water rents and other charges that
17 are made a lien subject to the provisions of this chapter, including any
18 outstanding interest and fees, prior to the date of such sale; or

19 (iii) entering into a new installment agreement under this section if
20 the department has made a finding of extenuating circumstances pursuant
21 to the process described in paragraph four of subdivision (e) of section
22 40-03 of title nineteen of the rules of the city of New York.

23 (b) If a default is not cured prior to the date of the tax lien sale,
24 such applicant shall not be eligible to enter into an installment agree-
25 ment for the subject property for five years, unless the department has
26 made a finding of extenuating circumstances pursuant to the process
27 described in paragraph four of subdivision (e) of section 40-03 of title
28 nineteen of the rules of the city of New York.

29 (c) Notwithstanding the prohibition in subparagraph (b) of this para-
30 graph against entering into an installment agreement for the subject
31 property for five years, an applicant who has defaulted on an install-
32 ment agreement and whose lien has been sold and, after the sale of the
33 lien, whose property on which the lien was sold is subject to another
34 tax lien that is eligible to be sold, may apply to enter into another
35 installment agreement with respect to such other lien before the end of
36 such five-year period, provided that such applicant makes a down payment
37 of twenty percent or more, of all delinquent real property taxes,
38 assessments, sewer rents, sewer surcharges, water rents and other charg-
39 es that are made a lien subject to the provisions of this chapter,
40 including any outstanding interest and fees, prior to the date of the
41 tax lien sale. An applicant shall not be eligible to enter an install-
42 ment agreement with a down payment under this subparagraph more than
43 once for the subject property.

44 (d) If a property owner who has entered into an installment agreement
45 with the department pursuant to this section fails to make a payment
46 pursuant to such agreement, the department shall, after the first missed
47 payment, mail a letter or send an email, when such address is known, to
48 the property owner stating that such owner is at risk of being in
49 default of such agreement. The letter or email shall be sent after the
50 first missed payment if the department has not received payment within
51 two weeks of the due date. Failure by the department to mail such letter
52 or send such email, however, shall not affect the validity of the
53 installment agreement that has been entered into, nor shall any claim
54 arise or exist against the commissioner of finance or any officer or
55 agency of the city by reason of such failure to mail such letter or send
56 such email.

1 1. Senior low-income installment agreement. 1. At the option of the
2 applicant, a senior low-income installment agreement may provide for
3 payments for a fixed period of time or for payments without a fixed
4 period of time. If the applicant selects an installment agreement with a
5 fixed time period, the applicant may select the term of the agreement.
6 The applicant may switch from an installment agreement without a fixed
7 time period to an installment agreement with a fixed time period, or
8 from an installment agreement with a fixed time period to an installment
9 agreement without a fixed time period, at any point.

10 2. A senior low-income installment agreement shall provide for the
11 payment of both a percentage of taxes and charges that have accrued, if
12 any, and a percentage of taxes and charges that will accrue after the
13 date of the installment agreement. The applicant may elect to pay an
14 installment amount based on zero percent, twenty-five percent, fifty
15 percent or seventy-five percent of the annual taxes and charges that
16 have accrued, if any, and that will accrue. If the applicant selects an
17 agreement with a fixed time period, the required payment shall be based
18 on the percentage selected and the term selected. If the applicant
19 selects an agreement without a fixed time period, the required payment
20 shall be based on the percentage selected for prospective taxes and
21 charges and a partial or full payment of the percentage of taxes and
22 charges that have accrued, if any. The applicant may adjust the payment
23 percentage at any point during the installment agreement, but may not
24 make more than one such adjustment during any six-month period.

25 m. Fixed length income-based installment agreement. 1. At the option
26 of the applicant, a fixed length income-based installment agreement
27 pursuant to this subdivision may provide for the payment of (a) only
28 taxes and charges that have accrued or (b) taxes and charges that have
29 accrued and taxes and charges that will accrue over the next fiscal
30 year. If option (a) is selected, the applicant shall pay all taxes and
31 charges that become due on the property after the installment agreement
32 is entered into in addition to the payment schedule provided in the
33 installment agreement. If option (b) is selected, the applicant shall
34 pay all taxes and charges that will accrue on the property after the
35 installment agreement has been in effect for one year in addition to the
36 payment schedule provided in the installment agreement.

37 2. The annual payment amount required pursuant to an installment
38 agreement described by this subdivision shall be based on a percentage
39 of the combined income of all of the property owners for the income tax
40 year immediately preceding the initial application for such installment
41 agreement. The applicant may select a percentage of two percent, four
42 percent, six percent or eight percent of such combined income. The
43 installment payment shall be calculated by dividing the annual payment
44 amount by twelve or four, depending on whether a monthly or quarterly
45 payment schedule is selected. The term of the agreement shall be calcu-
46 lated by dividing the taxes and charges included in the agreement pursu-
47 ant to paragraph one of this subdivision by the installment payment
48 determined by the calculation described in this paragraph.

49 3. An applicant may adjust the payment percentage at any point during
50 the installment agreement, but may not make more than one such adjust-
51 ment during any six-month period.

52 n. Extenuating circumstances income-based installment agreement. 1.
53 An extenuating circumstances income-based installment agreement shall
54 provide for the payment, during the period of such agreement, of a
55 percentage of taxes and charges that have accrued on the property and

1 taxes and charges that accrue after the date of the installment agree-
2 ment.

3 2. The annual payment amount required pursuant to an installment
4 agreement described by this subdivision shall be based on a percentage
5 of the combined income of all of the property owners for the income tax
6 year immediately preceding the initial application for an installment
7 agreement. The applicant may select a percentage of two percent, four
8 percent, six percent, or eight percent of such combined income. Such
9 installment payment shall be calculated by dividing the annual payment
10 amount by twelve or four, depending on whether a monthly or quarterly
11 payment schedule is selected. The installment agreement shall be for a
12 term of one year but may be extended on a yearly basis if the department
13 determines that the extenuating circumstances continue.

14 3. An applicant may adjust the payment percentage at any point during
15 the installment agreement, but may not make more than one such adjust-
16 ment during any six-month period.

17 o. After an applicant has entered into an installment agreement with
18 the department pursuant to this section, the department shall record the
19 entry of such agreement on the automated city register information
20 access system. Failure by the department to record such agreement,
21 however, shall in no manner affect the validity of such agreement, nor
22 shall any claim arise or exist against the commissioner of finance or
23 any officer or agency of the city by reason of such failure to record.

24 p. All installment agreements executed pursuant to this section on or
25 after the effective date of this subdivision shall include:

26 1. a statement that if payments required from an applicant pursuant to
27 such an agreement are not made for a period of six months, such appli-
28 cant shall be in default of such agreement, and the tax lien or tax
29 liens on the subject property may be sold, provided, however, that such
30 default may be cured upon such applicant's bringing all installment
31 payments and all current charges that are outstanding at the time of the
32 default to a current status, which shall include, but not be limited to,
33 any outstanding interest and fees, prior to the date of the tax lien
34 sale;

35 2. a notification that if such default is not cured prior to the date
36 of the tax lien sale, such property owner shall not be eligible to enter
37 into an installment agreement for the subject property for five years,
38 unless a finding of extenuating circumstances has been made by the
39 department pursuant to the process described in paragraph four of subdi-
40 vision (e) of section 40-03 of title nineteen of the rules of the city
41 of New York;

42 3. the definition of extenuating circumstances pursuant to such para-
43 graph;

44 4. a statement describing the conditions under which the property
45 owner may be eligible, after default, to enter into another installment
46 agreement in accordance with paragraph three of subdivision k of this
47 section; and

48 5. the date by which the applicant must submit a renewal application
49 each year.

50 q. Every January thirty-first, the department shall submit to the
51 speaker of the council a report on the usage of the installment agree-
52 ments set forth in this section in the prior calendar year, including,
53 but not limited to the following data, disaggregated by installment
54 agreement type:

55 1. the number of new installment agreements executed;

1 2. the number of installment agreements in effect on December thirty-
2 first of each year;

3 3. the number of applications for installment agreements received, the
4 number of applications not approved, and the reasons for disapproval;

5 4. for the senior low-income installment agreements, the number of new
6 installment agreements executed at zero percent, twenty-five percent,
7 fifty percent and seventy-five percent;

8 5. for the fixed length and extenuating circumstances income-based
9 installment agreements, the number of new installment agreements
10 executed at two percent, four percent, six percent or eight percent;

11 6. the average amount of property taxes and charges addressed by the
12 installment agreement;

13 7. the number of installment agreements that entered into default, the
14 number of defaults that were cured and the method by which they were
15 cured;

16 8. the number of installment agreements that were terminated, by
17 reason of termination;

18 9. the number of installment agreements that were renewed, including
19 whether such renewal occurred before or during the six-month period
20 described in paragraph one of subdivision h of this section; and

21 10. the number of installment agreements where the amount of liens on
22 the subject property exceeded the applicable percent of the net equity
23 in such property.

24 r. The department shall publicize the availability of the installment
25 agreements set forth in this section so as to maximize public awareness
26 of such agreements.

27 § 11-323 Commissioner of finance to conduct sale. The commissioner of
28 finance or his or her designee shall conduct the sales hereinbefore
29 provided to be made, or the commissioner may, in his or her discretion,
30 contract with any other person to conduct competitive sales of tax
31 liens.

32 § 11-324 Deposits and forfeits. The commissioner of finance may
33 require from each purchaser of a tax lien or tax liens, in cash or cash
34 equivalent in immediately available funds in the discretion of such
35 commissioner, a deposit of at least five per cent of the cash portion of
36 the sale price of the tax lien or tax liens purchased by him or her, as
37 liquidated damages, on a date determined by the commissioner of finance.
38 The balance shall be paid to the commissioner of finance in cash or cash
39 equivalent in immediately available funds or such other consideration
40 acceptable to the commissioner of finance or any combination thereof, in
41 his or her discretion. For purposes of this chapter "cash equivalent"
42 shall mean a cashier's check, bank check, certified check, money order,
43 or such other paper instrument as the commissioner of finance shall
44 prescribe. Such deposit and balance may also be paid by electronic funds
45 transfer. For purposes of this chapter, "electronic funds transfer"
46 shall mean any transfer of funds, other than a transaction originated by
47 check, draft or similar paper instrument, which is initiated using a
48 format prescribed by the commissioner of finance. A tax lien certificate
49 shall be made and delivered to the purchaser upon payment of the sale
50 price. In case any purchaser shall default in any obligation under the
51 terms and conditions of the tax lien sale, then the amount deposited by
52 the purchaser shall be forfeited to the city, and the tax lien or tax
53 liens upon the property affected by such purchase may be sold again at
54 the discretion of the commissioner of finance pursuant to section 11-319
55 of this chapter. All deposits forfeited as aforesaid shall be paid into
56 the general fund.

1 § 11-327 Tax lien certificates; operation. A tax lien certificate
2 shall operate to transfer and assign the tax lien upon the property
3 described therein for the taxes, assessments, sewer rents, sewer
4 surcharges, water rents, any other charges that are made a lien subject
5 to the provisions of this chapter, the costs of any notices and adver-
6 tisements given pursuant to this chapter, any other charges that are due
7 and payable, a surcharge pursuant to section 11-332 of this chapter, and
8 interest and penalties thereon.

9 § 11-328 Contents of a tax lien certificate. A tax lien certificate
10 shall contain a transfer and assignment by the city of the tax lien sold
11 to the purchaser, the date of the sale, the aggregate amount of the tax
12 lien so transferred, and the items of taxes, assessments, sewer rents,
13 sewer surcharges, water rents, any other charges that are made a lien
14 subject to the provisions of this chapter, the costs of any advertise-
15 ments and notices given pursuant to this chapter, any other charges that
16 are due and payable, a surcharge pursuant to section 11-332 of this
17 chapter, and interest and penalties thereon comprising the tax lien, the
18 rate of interest which the tax lien certificate will bear, the date when
19 the amounts under such tax lien are due pursuant to section 11-332 of
20 this chapter, and a description of the property affected by the tax
21 lien, which description shall include the designation of such property
22 on the tax map, by its lot number and the number of the block in which
23 it is contained, and such other identifying information as the commis-
24 sioner of finance or his or her designee may deem proper to add. For
25 purposes of this section, the words "date of sale" shall have the same
26 meaning provided in subdivision (e) section 11-320 of this chapter. Each
27 tax lien certificate shall be executed by the commissioner of finance or
28 his or her designee by manual or facsimile signature and shall be
29 acknowledged by the manual or facsimile signature of the officer
30 subscribing the same in the manner in which a deed is required to be
31 acknowledged to be recorded in the county in which the property affected
32 is situated. The commissioner of finance may designate an agent for
33 purposes of authenticating any such signature.

34 § 11-330 Record of tax lien certificates. The commissioner of finance
35 or his or her designee, shall keep in his or her office a public record
36 of sales of tax liens, and a copy of each tax lien certificate issued by
37 such commissioner or his or her designee. Assignments of tax lien
38 certificates duly acknowledged may be filed and recorded in the office
39 of the commissioner of finance or his or her designee. A tax lien
40 certificate and any assignment thereof, duly acknowledged, shall be
41 deemed conveyances under article eight of the real property law, and may
42 be recorded in the office of the recording officer of any county in
43 which the real property which it affects is situated. Tax lien certif-
44 icates and all assignments thereof shall be recorded by recording offi-
45 cers in the same manner as mortgages and assignments thereof, but with-
46 out payment of tax under article eleven of the tax law. Neither the tax
47 lien nor the rights transferred or created by a tax lien certificate
48 shall be impaired by failure of a recording officer to record a tax lien
49 certificate made by the city through the commissioner of finance or his
50 or her designee.

51 § 11-331 Records to be competent evidence. The record in the office of
52 the commissioner of finance or his or her designee of sales of tax
53 liens, of a tax lien certificate, and of a copy of a tax lien certif-
54 icate, and of an assignment of a tax lien certificate, a record of a tax
55 lien certificate in the office of a recording officer, and of an assign-
56 ment of a tax lien certificate, duly acknowledged, in the office of a

1 recording officer, shall each be evidence in any court in the state
2 without further proof. A transcript of any record enumerated in this
3 section, duly certified, shall be evidence in any court in the state
4 with like effect as the original instrument of record.

5 § 11-332 Rights of purchaser of tax lien. a. Any purchaser of a tax
6 lien or tax liens shall stand in the same position as the city and shall
7 have all the rights and remedies that the city would have had if the tax
8 lien or tax liens had not been sold.

9 b. The aggregate amount of each tax lien transferred pursuant to this
10 chapter shall be due and payable one year from the date of the sale.
11 Until such aggregate amount is fully paid and discharged, the holder of
12 the tax lien certificate shall be entitled to receive interest on such
13 aggregate amount from the date of sale, and semi-annually at the rate of
14 interest applicable in accordance with section 11-319 of this chapter.
15 If such aggregate amount is partially paid, the holder of the tax lien
16 certificate shall be entitled to receive interest only on the amount
17 that remains unpaid. Notwithstanding the foregoing sentence, the holder
18 of the tax lien certificate shall be entitled to receive and retain a
19 surcharge equal to five percent of the lien arising pursuant to the
20 provisions of this chapter as a result of the nonpayment of taxes,
21 assessments, sewer rents, sewer surcharges, water rents, any other
22 charges that are made a lien subject to the provisions of this chapter,
23 the costs of any advertisements and notices given pursuant to this chap-
24 ter, any other charges that are due and payable, and interest and penal-
25 ties thereon. Any amounts due shall be paid directly to the holder of
26 the tax lien certificate. At the option of the holder of any tax lien
27 certificate the aggregate amount thereof shall become subject to fore-
28 closure after default in the payment of interest for thirty days or
29 after default for six months after the date of sale stated in the tax
30 lien certificate in accordance with subdivision (d) of section 11-320
31 and section 11-328 of this chapter in the payment of any taxes, assess-
32 ments, sewer rents, sewer surcharges, water rents, any other charges
33 that are made a lien subject to the provisions of this chapter, or the
34 interest or penalties thereon which become a lien on or after the date
35 of sale of the tax lien transferred by such tax lien certificate. At his
36 or her option, the holder of the tax lien certificate may satisfy any
37 such subsequent tax lien on the same property, and shall, by virtue of
38 such satisfaction, be deemed to be in the same position as if he or she
39 were a purchaser of a tax lien certificate for such subsequent tax lien,
40 provided, however, that such holder shall not be entitled to receive a
41 five percent surcharge on such subsequent tax lien pursuant to this
42 section. The rate of interest on such subsequent lien shall be the rate
43 of interest applicable to tax lien certificates pursuant to section
44 11-319 of this chapter. The commissioner of finance or his or her desig-
45 nee, at the request of the purchaser of such subsequent lien, shall
46 issue a tax lien certificate for such lien pursuant to sections 11-327
47 and 11-328 of this chapter. Upon issuance of such certificate, the
48 commissioner of finance or his or her designee shall provide such notice
49 as is required pursuant to section 11-320(d) of this chapter. Failure to
50 provide notice pursuant to this subdivision shall not affect the validi-
51 ty of any transfer of a subsequent tax lien or tax liens pursuant to
52 this subdivision. Any person having a legal or beneficial interest in
53 property affected by a tax lien certificate may satisfy the same at any
54 time upon payment of the amounts due with interest at the rate applica-
55 ble in accordance with section 11-319 of this chapter. Upon satisfaction
56 of the tax lien, the holder thereof shall issue to the person who satis-

1 fied such tax lien a certificate of discharge, certifying that the tax
2 lien has been paid or has been otherwise satisfied, in such recordable
3 form as has been approved by the commissioner of finance. For purposes
4 of this section, the words "date of sale" shall have the same meaning
5 provided in subdivision (e) of section 11-320 of this chapter.

6 § 11-333 Discharge of tax lien. A tax lien sold pursuant to the
7 provisions of this chapter may be discharged by presenting the certifi-
8 cate of discharge issued by the holder of the tax lien pursuant to
9 section 11-332 of this chapter to the recording officer of the county in
10 which the real property that it affects is situated, and any recording
11 officer to whom such certificate of discharge is presented shall record
12 the same.

13 § 11-334 Exemption from taxation. Tax liens and tax lien certificates
14 shall be exempt from taxation by the state or any local subdivisions
15 thereof, except from the taxes imposed by article ten of the tax law.
16 The real property affected by any tax lien shall not be exempt from
17 taxation by reason of this section.

18 § 11-335 Foreclosure of tax liens. If the amount of any tax lien which
19 shall have been transferred by a tax lien certificate shall not be paid
20 when under its terms and the provisions of section 11-332 of this chap-
21 ter such amount shall be due, the holder of such tax lien certificate
22 may maintain an action in the supreme court to foreclose such tax lien.
23 The holder of such tax lien certificate shall notify the commissioner of
24 finance or his or her designee in writing whenever he or she commences
25 such action at the time of filing of such action, and shall notify the
26 commissioner of finance in writing of the resolution of such action,
27 including any settlement of such action, within thirty days of such
28 resolution. In an action to foreclose a tax lien any person shall be a
29 proper party of whom the plaintiff alleges that such person has or may
30 have or that the plaintiff has reason to believe that such person has or
31 may have an interest in or claim upon the property affected by the tax
32 lien. A plaintiff in an action to foreclose a tax lien shall recover
33 reasonable attorney's fees for maintaining such action. Except as other-
34 wise provided in this chapter an action to foreclose a tax lien shall be
35 regulated by the provisions of the civil practice law and rules and by
36 all other provisions of law, and rules of practice applicable to actions
37 to foreclose mortgages on real property. The people of the state of New
38 York or the city of Staten Island may be made party to an action to
39 foreclose a tax lien in the same manner as a natural person. Where the
40 people of the state of New York or the city of Staten Island are made a
41 party defendant the complaint shall set forth, in addition to the other
42 matters required to be set forth by law, detailed facts showing the
43 particular nature of the interest in or the lien on such property of the
44 people of the state of New York or the city of Staten Island, and
45 detailed facts showing the particular nature of the interest in or the
46 lien on such property which plaintiff has reason to believe that the
47 people of the state of New York or the city of Staten Island have or may
48 have in such property, and the reason for making the people of the state
49 of New York or the city of Staten Island a party defendant. Upon failure
50 to state such facts the complaint shall be dismissed as to the people of
51 the state or the city of Staten Island.

52 § 11-336 Pleading tax lien certificate. Whenever a cause of action,
53 defense or counterclaim, is for the foreclosure of a tax lien, or is in
54 any manner founded upon a tax lien or a tax lien certificate, the
55 production in evidence of an instrument executed by the commissioner of
56 finance or his or her designee in the form prescribed in section 11-328

1 of this chapter for a tax lien certificate subscribed by or in behalf of
2 the commissioner of finance or his or her designee shall be presumptive
3 evidence that the lien purported to be transferred by such an instrument
4 was a valid and enforceable lien, and that it has been duly assigned to
5 the purchaser, and it shall not be necessary to plead or prove any act,
6 proceeding, notice or action, preceding the delivery of such tax lien
7 certificate nor to establish the validity of the tax lien transferred by
8 such tax lien certificate. If a party or person in interest in any such
9 action or proceeding claims that a tax lien is irregular or invalid, or
10 that there is any defect therein or that a tax lien certificate is
11 irregular, invalid or defective, such invalidity, irregularity or defect
12 must be specifically pleaded or set forth, and must be established
13 affirmatively by the party or person pleading or setting forth the same.

14 § 11-337 Judgment upon tax lien. In every action for the foreclosure
15 of a tax lien, and in every action or proceeding in which a cause of
16 action, defense or counterclaim is in any manner founded upon a tax lien
17 or a tax lien certificate, such tax lien certificate and the tax lien
18 which it transfers shall be presumed to be regular and valid and effec-
19 tual to transfer to the purchaser named therein a valid and enforceable
20 tax lien. Unless in such an action or proceeding such tax lien or tax
21 lien certificate be found to be invalid, they shall be adjudged to be
22 enforceable and valid, for the amount thereof and the interest to which
23 the holder may be entitled and a tax lien transferred by a tax lien
24 certificate effectual to transfer such tax lien to the purchaser named
25 therein.

26 § 11-338 Judgment of foreclosure of tax lien; sale. In an action to
27 foreclose a tax lien, unless the defendants obtain judgment, the plain-
28 tiff shall be entitled to a judgment establishing the validity of the
29 tax lien so far as the same shall not be adjudged invalid and of the tax
30 lien certificate and directing the sale of the real, personal or mixed
31 property affected thereby, or such part thereof as shall be sufficient
32 to discharge the tax lien, or such items thereof as shall not be
33 adjudged invalid together with the expense of the sale, and the costs of
34 the action.

35 § 11-339 City may purchase at sale. At a sale pursuant to judgment in
36 an action to foreclose a tax lien or at any sale free of tax liens, the
37 city, without authorization other than hereby given, may purchase any
38 property that is the subject of the sale.

39 § 11-340 Effect of judgment foreclosing tax lien. Every final judg-
40 ment in an action to foreclose a tax lien shall be binding upon, and
41 every conveyance upon a sale pursuant thereto, shall transfer to and
42 vest in the purchaser all the right, title, interest and estate in and
43 claim upon the real property affected by such judgment, of the plain-
44 tiff, each defendant upon whom the summons is served, each person claim-
45 ing from, through or under such a defendant by title accruing after the
46 filing of notice of pendency of the action or after the entry of judg-
47 ment and filing of the judgment roll in the proper county clerk's
48 office, and each person not in being when the judgment is rendered, who
49 afterwards may become entitled to a beneficial interest attaching to, or
50 an estate or interest in such real property or any portion thereof,
51 provided that the person presumptively entitled to such beneficial
52 interest, estate or interest is a party to such action or bound by such
53 judgment. So much of section three hundred seventeen of the civil prac-
54 tice law and rules as requires the court to allow a defendant to defend
55 an action after final judgment shall not apply to an action to foreclose
56 a tax lien. Delivery of the possession of real property affected by a

1 judgment to foreclose a tax lien may be compelled in the manner
2 prescribed in section two hundred twenty-one of the real property
3 actions and proceedings law.

4 § 11-341 Surplus. Any surplus of the proceeds of the sale, after
5 paying the expenses of the sale, and all taxes, assessments, sewer
6 rents, sewer surcharges, water rents, any other charges made a lien
7 subject to the provisions of this chapter, the costs of any advertise-
8 ments and notices given pursuant to this chapter, any other charges that
9 are due and payable, any surcharge pursuant to section 11-332 of this
10 chapter and interest and penalties thereon, including such amounts which
11 accrued or became a lien on and after the date of sale of the tax lien
12 or tax liens and up to and including the date of the sale of the proper-
13 ty in foreclosure, and satisfying the amount of such tax lien or tax
14 liens and interest and the costs of the action, must be paid into court,
15 for the use of the person or persons entitled thereto. If any part of
16 the surplus remains in court for the period of three months, and no
17 application has been made therefor, the court must, and, if an applica-
18 tion therefor is pending, the court may direct such surplus to be
19 invested at interest, for the benefit of the person or persons entitled
20 thereto, to be paid upon the direction of the court.

21 § 11-342 Foreclosed tax lien not arrears. Any party to an action to
22 foreclose a tax lien or any purchaser or any party in interest may give
23 notice of such foreclosure to the city collector and after such notice
24 the items which constituted the tax lien thus foreclosed shall not be
25 entered by the city collector in any yearly assessment-roll, so long as
26 the judgment of foreclosure of such lien remains in force.

27 § 11-347 Corporation counsel to protect city in all proceedings relat-
28 ing to tax liens. It shall be the duty of the corporation counsel to
29 protect the interest of the city in all matters, actions and proceedings
30 relating to tax liens and tax lien certificates; to intervene on behalf
31 of the city or to make the city a party to any action in which the
32 corporation counsel believes it to be to the interest of the city so to
33 do, by reason of any matter arising under or relating to any tax lien or
34 tax lien certificate, or advertisement of sale of tax liens. The corpo-
35 ration counsel in his or her discretion may represent the purchaser of a
36 tax lien or the holder of a tax lien certificate in any action in which
37 the corporation counsel believes it to be in the interest of the city so
38 to do, by reason of any matter arising under or relating to any tax lien
39 or tax lien certificate, or advertisement of sale of tax liens. All
40 costs recovered in any action or proceeding conducted or defended by the
41 corporation counsel pursuant to this section shall belong to the city
42 and shall be collected, applied and disposed of in the same manner as
43 are other costs recovered by the city.

44 § 11-349 Lost tax lien certificate; delivery of duplicate in case of.
45 Whenever any tax lien certificate given by the commissioner of finance
46 or his or her designee, as in this chapter provided, shall be lost, the
47 commissioner of finance or his or her designee may receive evidence of
48 such loss, and on satisfactory proof of the fact may direct the
49 execution and delivery of a duplicate to such person or persons who
50 shall appear entitled thereto, and may also, in the commissioner's
51 discretion, require a bond of indemnity to the city.

52 § 11-350 Affidavits of publication and mailing of necessary notices to
53 be preserved. It shall be the duty of the commissioner of finance or his
54 or her designee to procure, preserve and register at the department of
55 finance, affidavits of the publication and mailing of all the advertise-
56 ments and notices by this chapter required to be published and mailed,

1 and such affidavits shall be presumptive proof of such publication and
2 mailing in all the courts of this state.

3 § 11-353 Cancellation of taxes, assessments, water rents, sewer rents,
4 sewer surcharges, any charges that are made a lien subject to the
5 provisions of this chapter, the costs of any advertisements and notices
6 given pursuant to this chapter, any other charges that are due and paya-
7 ble, a surcharge pursuant to section 11-332 of this chapter, and inter-
8 est and penalties thereon. Whenever the city has heretofore or shall
9 hereafter become vested with title to property acquired by virtue of tax
10 enforcement foreclosure proceedings, or by deed in lieu thereof, the
11 commissioner of finance, or his or her designee, shall cancel all unpaid
12 real estate taxes, tax lien certificates, assessments, water rents,
13 sewer rents, sewer surcharges, any charges that are made a lien subject
14 to the provisions of this chapter, the costs of any advertisements and
15 notices given pursuant to this chapter, any other charges that are due
16 and payable, a surcharge pursuant to section 11-332 of this chapter, and
17 interest and penalties thereon upon which the foreclosure action was
18 predicated. Upon the sale of such property and the conveyance of the
19 title thereof by the city, the commissioner of finance, or his or her
20 designee, shall cancel all unpaid real estate taxes, assessments, water
21 rents, sewer rents, sewer surcharges, any charges that are made a lien
22 subject to the provisions of this chapter, the costs of any advertise-
23 ments and notices given pursuant to this chapter, any other charges that
24 are due and payable, a surcharge pursuant to section 11-332 of this
25 chapter, and interest and penalties thereon that shall have accrued
26 during the period between the date of the last unpaid item upon which
27 the foreclosure action was predicated and the date of conveyance of
28 title. The commissioner of finance, or his or her designee, shall enter
29 notations of such cancellations in the appropriate records for each such
30 parcel of property.

31 § 11-354 Additional method to enforce payment of tax liens held by the
32 city. (a) Notwithstanding any other provision of law and notwithstanding
33 any omission to hold a tax lien sale, whenever any tax, assessment,
34 sewer rent, sewer surcharge, water rent, any charge that is made a lien
35 subject to the provisions of this chapter or chapter four of this title,
36 or interest and penalties thereon, has been due and unpaid for a period
37 of at least one year from the date on which the tax, assessment or other
38 legal charge represented thereby became a lien, or in the case of any
39 class one property or any class two property that is a residential
40 condominium or residential cooperative, as such classes of property are
41 defined in subdivision one of section eighteen hundred two of the real
42 property tax law, or in the case of a multiple dwelling owned by a
43 company organized pursuant to article eleven of the private housing
44 finance law with the consent and approval of the department of housing
45 preservation and development, for a period of at least three years from
46 the date on which the tax, assessment or other legal charge became a
47 lien, the city, as owner of a tax lien, may maintain an action in the
48 supreme court to foreclose such lien. Such action shall be governed by
49 the procedures set forth in section 11-335 of this chapter; provided,
50 however, that such parcel shall only be sold to the highest responsible
51 bidder. Such purchaser shall be deemed qualified as a responsible bidder
52 pursuant to such criteria as are established in rules promulgated by the
53 commissioner of finance after consultation with the commissioner of
54 housing preservation and development.

55 (b) At a sale pursuant to a judgment in an action brought pursuant to
56 subdivision (a) of this section to foreclose a tax lien, the city may

1 purchase property subject to such lien in accordance with the provisions
2 of section 11-339 of this chapter.

3 (c) The provisions of this section shall not affect any existing reme-
4 dy or procedure for the enforcement or foreclosure of tax liens provided
5 for in this code or any other law, but the remedy provided herein for
6 foreclosure of tax liens shall be in addition to any other remedies or
7 procedures provided by any general, special or local law. Notwithstand-
8 ing any other provision of this code, the commissioner of finance shall
9 be authorized to agree to forebear to commence an in rem action against
10 property which has an outstanding and unredeemed tax lien certificate
11 previously sold by the city and held by a third party pursuant to this
12 chapter.

13 § 11-355 Reporting. The commissioner of finance shall submit an annual
14 report to the council concerning the sale or sales of tax liens during
15 the preceding year pursuant to this chapter. Such report shall include
16 the following information regarding such sale or sales: a list of prop-
17 erties for which a tax lien or tax liens has or have been sold, includ-
18 ing identification of the particular tax lien or tax liens sold; the
19 proceeds received from the sale or sales of tax liens; identification of
20 the purchaser of and servicer for the tax lien or tax liens sold; a
21 report of servicer activities during the immediately preceding year; the
22 redemption rate for tax liens that have been sold; the delinquency rate
23 for real property taxes for the immediately preceding year; and any
24 other information pertinent to the sale of tax liens that may be
25 requested by the council and which is not made confidential pursuant to
26 section 11-208.1 of this code. Upon request by the council, information
27 provided in such report shall be arranged by community board. In addi-
28 tion to such report, the commissioner of finance shall from time to time
29 provide any other information pertinent to the sale of tax liens that
30 may be requested by the council and which is not made confidential
31 pursuant to section 11-208.1 of the code, including updated information
32 regarding the sale or sales of tax liens pursuant to this chapter. In
33 addition to such report, no later than August thirty-first, two thousand
34 twenty, the commissioner shall provide to the council a report listing
35 all properties on which liens have been sold during the period from
36 January first, two thousand fifteen through December thirty-first, two
37 thousand nineteen. The report shall indicate, based on records in the
38 office of the register, whether a transfer of or mortgage recorded on
39 any of such properties has occurred during such period after the sale of
40 any tax lien sold during such period.

41 CHAPTER 4

42 TAX LIEN FORECLOSURE BY ACTION IN REM

43 § 11-401 Definitions. Whenever used in this chapter, the following
44 terms shall mean:

45 1. "Tax lien." The lien arising as a result of the nonpayment of
46 taxes, assessments, sewer rents, sewer surcharges, water rents, any
47 other charges that are made a lien subject to the provisions of this
48 chapter or chapter three of this title, interest and penalties thereon,
49 and the right of the city to receive such amounts.

50 2. "Court." The supreme court.

51 3. "Class." Any class of real property defined in subdivision one of
52 section eighteen hundred two of the real property tax law, and any
53 subclassification of class two real property where such subclassifica-

1 tion is established by rule of the commissioner of finance promulgated
2 pursuant to this subdivision.

3 4. "Distressed property." Any parcel of class one or class two real
4 property that is subject to a tax lien or liens that result from an
5 environmental control board judgment against the owner of such parcel
6 for a building code violation with a lien or liens to value ratio, as
7 determined by the commissioner of finance, equal to or greater than
8 twenty-five percent or any parcel of class one or class two real proper-
9 ty that is subject to a tax lien or liens with a lien or liens to value
10 ratio, as determined by the commissioner of finance, equal to or greater
11 than fifteen percent and that meets one of the following two criteria:

12 i. such parcel has an average of five or more hazardous or immediately
13 hazardous violations of record of the housing maintenance code per
14 dwelling unit; or

15 ii. such parcel is subject to a lien or liens for any expenses
16 incurred by the department of housing preservation and development for
17 the repair or the elimination of any dangerous or unlawful conditions
18 therein, pursuant to section 27-2144 of this code, in an amount equal to
19 or greater than one thousand dollars.

20 § 11-401.1 Procedures for distressed property. a. The commissioner of
21 finance shall, not less than sixty days preceding the date of the sale
22 of a tax lien or tax liens, submit to the commissioner of housing pres-
23 ervation and development a description by block and lot, or by such
24 other identification as the commissioner of finance may deem appropri-
25 ate, of any parcel of class one or class two real property on which
26 there is a tax lien that may be foreclosed by the city. The commissioner
27 of housing preservation and development shall determine, and direct the
28 commissioner of finance, not less than ten days preceding the date of
29 the sale of a tax lien or tax liens, whether any such parcel is a
30 distressed property as defined in subdivision four of section 11-401 of
31 this chapter. Any tax lien on a parcel so determined to be a distressed
32 property shall not be included in such sale. In connection with a subse-
33 quent sale of a tax lien or tax liens, the commissioner of finance may,
34 not less than sixty days preceding the date of the sale, resubmit to the
35 commissioner of housing preservation and development a description by
36 block and lot, or by such other identification as the commissioner of
37 finance may deem appropriate, of any parcel of class one or class two
38 real property that was previously determined to be a distressed property
39 pursuant to this paragraph and on which there is a tax lien that may be
40 included in such sale. The commissioner of housing preservation and
41 development shall determine, and direct the commissioner of finance, not
42 less than ten days preceding the date of the sale, whether such parcel
43 remains a distressed property. If the commissioner of housing preserva-
44 tion and development determines that the parcel is not a distressed
45 property, then the tax lien on the parcel may be included in the sale.

46 b. The commissioner of housing preservation and development may peri-
47 odically review whether a parcel of class one or class two real property
48 that is subject to subdivision c of this section or subdivision j of
49 section 11-412.1 of this chapter remains a distressed property. If the
50 commissioner determines that the parcel is not a distressed property as
51 defined in subdivision four of section 11-401 of this chapter, then the
52 parcel shall not be subject to such subdivisions.

53 c. Any parcel so determined to be a distressed property shall be
54 subject to an in rem foreclosure action, or in the case where the
55 commissioner of finance does not commence such action the commissioner
56 of housing preservation and development shall evaluate such parcel and

1 take such action as he or she deems appropriate under the programs,
2 existing at the time of such evaluation, that are designed to encourage
3 the rehabilitation and preservation of existing housing, and shall moni-
4 tor or cause to be monitored the status of the property. The commission-
5 er of housing preservation and development, in his or her discretion,
6 shall cause an inspection to be conducted on any parcel so determined to
7 be a distressed property. In addition, the commissioner of housing pres-
8 ervation and development shall submit to the council a list of all
9 parcels so determined to be a distressed property within thirty days
10 from the date such parcels are identified as a distressed property.

11 § 11-402 Applicability of procedure of foreclosure in rem. a. The
12 provisions of this chapter shall be applicable only to tax liens owned
13 by the city.

14 b. The provisions of this chapter shall not affect any existing remedy
15 or procedure for the enforcement or foreclosure of tax liens provided
16 for in this code or any other law, but the remedy provided herein for
17 foreclosure by action in rem shall be in addition to any other remedies
18 or procedures provided by any general, special or local law.

19 c. The provisions of this chapter shall not affect pending actions or
20 proceedings, provided, however, that any pending action or proceeding
21 for the enforcement or foreclosure of tax liens may be discontinued, and
22 a new action may be instituted pursuant to the provisions of this chap-
23 ter, in respect to any such tax lien.

24 § 11-402.1 Inapplicability of article eleven of the real property tax
25 law to the enforcement of the collection of delinquent taxes. In accord-
26 ance with section six of chapter six hundred two of the laws of nineteen
27 hundred ninety-three and subdivision two of section eleven hundred four
28 of the real property tax law, it is hereby provided that the collection
29 of delinquent taxes shall continue to be enforced pursuant to chapters
30 three and four of title eleven of this code and other related provisions
31 of the charter and this code as such chapters three and four and such
32 related provisions may from time to time be amended and that article
33 eleven of the real property tax law shall not be applicable to the city.

34 § 11-403 Jurisdiction. The supreme court shall have jurisdiction of
35 actions authorized by this chapter.

36 § 11-404 Foreclosure by action in rem. a. Whenever it shall appear
37 that a tax lien or tax liens has or have been due and unpaid for a peri-
38 od of at least one year from the date on which the tax, assessment or
39 other legal charge represented thereby became a lien, such tax lien or
40 tax liens, except as provided in subdivision b of this section or other-
41 wise provided by this chapter, may be summarily foreclosed in the manner
42 provided in this chapter, notwithstanding the provisions of any general,
43 special or local law and notwithstanding any omission to hold a sale of
44 a tax lien or tax liens prior to such foreclosure. A bill of arrears or
45 any other instrument evidencing such tax lien or tax liens shall be
46 evidence of the fact that the tax lien or tax liens represented thereby
47 has not or have not been paid to the city or sold by it.

48 b. A tax lien on any class one property or any class two property that
49 is a residential condominium or residential cooperative, as such classes
50 of property are defined in subdivision one of section eighteen hundred
51 two of the real property tax law, and on any multiple dwelling owned by
52 a company organized pursuant to article eleven of the private housing
53 finance law with the consent and approval of the department of housing
54 preservation and development, shall not be foreclosed in the manner
55 provided in this chapter until such tax lien has been due and unpaid for

1 a period of at least three years from the date on which the tax, assess-
2 ment or other legal charge represented thereby became a lien.

3 § 11-405 Preparation and filing of lists of delinquent taxes. a. The
4 commissioner of finance from time to time shall prepare a list, to be
5 known as a "list of delinquent taxes", of all parcels, or all parcels
6 within a particular class or classes, that are within a particular
7 section of a tax map or portion of a section of a tax map of the city
8 and on which there are tax liens subject to foreclosure pursuant to this
9 chapter, provided, however, that no such portion shall be smaller than a
10 block, as defined in subdivision d of section 11-204 of subchapter one
11 of chapter two of this title. Every such list shall bear a caption
12 containing the in rem action number of the city's tax foreclosure
13 proceeding, the section of a tax map or portion of a section of a tax
14 map, and where the action covers less than all parcels in a section of a
15 tax map or portion of a section of a tax map, the particular class or
16 classes, and shall contain a statement of the rate or rates at which
17 interest and penalties will be computed for the various liens it
18 includes.

19 b. Every such list shall set forth the parcels it includes separately
20 and number them serially. For each parcel it shall contain (1) a brief
21 description sufficient to identify the parcel, including section, block
22 and lot numbers, and the street and street number, if any, or in the
23 absence of such information the parcel or tract identification number
24 shown on a tax map or on a map filed in the county clerk's or register's
25 office and (2) a statement of the amounts and dates of all unpaid tax
26 liens which are subject to foreclosure under this chapter and of those
27 which have accrued thereafter.

28 c. (1) The commissioner of finance may exclude or thereafter remove
29 from such list any parcels (i) as to which questions the commissioner
30 deems meritorious have been raised regarding the validity of the liens,
31 (ii) as to which all the taxes and other charges which rendered said
32 parcels eligible for inclusion in said list have been paid, or (iii)
33 which are owned by an entity other than a company organized pursuant to
34 article eleven of the private housing finance law with the consent and
35 approval of the department of housing preservation and development and
36 which are not owner-occupied residential buildings of not more than five
37 residential units and as to which an agreement has been duly made,
38 executed and filed with such commissioner for the payment of the delin-
39 quent taxes, assessments or other legal charges, interest and penalties
40 in installments. The first installment shall be paid upon the filing of
41 the installment agreement with the commissioner and shall be in an
42 amount of not less than fifteen percent of such delinquent taxes,
43 assessments or other legal charges, interest and penalties. The remain-
44 ing installments, which shall be twice the number of unpaid quarters of
45 real estate taxes or the equivalent thereof but which shall in no event
46 exceed thirty-two in number, shall be payable quarterly on the first day
47 of July, October, January and April. For the purposes of calculating the
48 number of such remaining installments unpaid real estate taxes which
49 are, on and after July first, nineteen hundred eighty-two, due and paya-
50 ble on an other than quarterly basis shall be deemed to be payable on a
51 quarterly basis.

52 (2) The commissioner of finance may also exclude or thereafter remove
53 from such list any parcels which are owned by a company organized pursu-
54 ant to article eleven of the private housing finance law with the
55 consent and approval of the department of housing preservation and
56 development, and (i) as to which an agreement has been duly made,

1 executed and filed with said commissioner for the payment of the delin-
2 quent taxes, assessments or other legal charges incurred prior to the
3 ownership of said parcel by said article eleven company, and the inter-
4 est and penalties thereon, in installments. The first installment there-
5 of shall be paid upon the filing of the installment agreement with the
6 commissioner and shall be in an amount of not less than ten percent of
7 such delinquent taxes, assessments or other legal charges and the inter-
8 est and penalty thereon. The remaining installments, which shall be
9 three times the number of unpaid quarters of real estate taxes or the
10 equivalent thereof but which shall in no event exceed forty-eight in
11 number shall be payable quarterly on the first days of July, October,
12 January and April. For the purposes of calculating the number of such
13 remaining installments unpaid real estate taxes which are, on and after
14 July first, nineteen hundred eighty-two due and payable on an other than
15 quarterly basis shall be deemed to be payable on a quarterly basis; and

16 (ii) as to which an agreement has been duly made, executed and filed
17 with said commissioner, for the payment of the delinquent taxes, assess-
18 ments or other legal charges incurred after the ownership of said parcel
19 by said article eleven company on the same terms as are provided in
20 paragraph one of this subdivision.

21 (3) The commissioner of finance may also exclude or thereafter remove
22 from such list any parcels which are owner-occupied residential build-
23 ings of not more than five residential units as to which an agreement
24 has been duly made, executed and filed with said commissioner for the
25 payment of the delinquent taxes, assessments, or other legal charges and
26 the interest and penalties thereon, in installments. The first install-
27 ment thereof shall be paid upon the filing of the installment agreement
28 with the commissioner and shall be in an amount not less than ten
29 percent of such delinquent taxes, assessment or other legal charges and
30 the interest and penalty thereon. The remaining installments, which
31 shall be three times the number of unpaid quarters of real estate taxes
32 or the equivalent thereof but which shall in no event exceed forty-eight
33 in number, shall be payable quarterly on the first days of July, Octo-
34 ber, January and April. For purposes of calculating the number of such
35 remaining installments unpaid real estate taxes which are, on and after
36 July first, nineteen hundred eighty-two, due and payable on an other
37 than quarterly basis shall be deemed to be payable on a quarterly basis.

38 (4) Notwithstanding paragraph one, two or three of this subdivision,
39 with respect to installment agreements duly made, executed and filed on
40 or after the date on which this paragraph takes effect, the commissioner
41 of finance may also exclude or thereafter remove from such list any
42 parcel that is (i) (A) a residential building containing not more than
43 five residential units, (B) a residential condominium unit, (C) a resi-
44 dential building held in a cooperative form of ownership, or (D) owned
45 by a company organized pursuant to article eleven of the state private
46 housing finance law with the consent and approval of the department of
47 housing preservation and development, and (ii) as to which an agreement
48 has been duly made, executed and filed with such commissioner for the
49 payment of the delinquent taxes, assessments or other legal charges, and
50 the interest and penalties thereon, in installments. The first install-
51 ment thereof shall be paid upon the filing of the installment agreement
52 with the commissioner and shall be in an amount equal to not less than
53 ten percent of the total amount of such delinquent taxes, assessments or
54 other legal charges and the interest and penalties thereon. The remain-
55 ing installments, which shall be three times the number of unpaid quar-
56 ters of real estate taxes or the equivalent thereof, but which shall in

1 no event exceed thirty-two in number, shall be payable quarterly on the
2 first days of July, October, January and April. For the purposes of
3 calculating the number of such remaining installments, unpaid real
4 estate taxes that are due and payable on other than a quarterly basis
5 shall be deemed to be payable on a quarterly basis.

6 (5) Notwithstanding paragraph one, two or three of this subdivision,
7 with respect to installment agreements duly made, executed and filed on
8 or after the date on which this paragraph takes effect, the commissioner
9 of finance may also exclude or thereafter remove from such list any
10 parcel of class one or class two real property, other than a parcel
11 described in paragraph four of this subdivision, as to which an agree-
12 ment has been duly made, executed and filed with such commissioner for
13 the payment of the delinquent taxes, assessments or other legal charges,
14 and the interest and penalties thereon, in installments. The first
15 installment thereof shall be paid upon the filing of the installment
16 agreement with the commissioner and shall be in an amount equal to not
17 less than fifteen percent of the total amount of such delinquent taxes,
18 assessments or other legal charges and the interest and penalties there-
19 on. The remaining installments, which shall be twice the number of
20 unpaid quarters of real estate taxes or the equivalent thereof, but
21 which shall in no event exceed thirty-two in number, shall be payable
22 quarterly on the first days of July, October, January and April. For the
23 purposes of calculating the number of such remaining installments,
24 unpaid real estate taxes that are due and payable on other than a quar-
25 terly basis shall be deemed to be payable on a quarterly basis.

26 (6) Notwithstanding paragraph one, two or three of this subdivision,
27 with respect to installment agreements duly made, executed and filed on
28 or after the date on which this paragraph takes effect, the commissioner
29 of finance may also exclude or thereafter remove from such list any
30 parcel of class three or class four real property as to which an agree-
31 ment has been duly made, executed and filed with such commissioner for
32 the payment of the delinquent taxes, assessments or other legal charges,
33 and the interest and penalties thereon, in installments. The first
34 installment thereof shall be paid upon the filing of the installment
35 agreement with the commissioner and shall be in an amount equal to not
36 less than fifteen percent of the total amount of such delinquent taxes,
37 assessments or other legal charges and the interest and penalties there-
38 on. The remaining installments, which shall be twice the number of
39 unpaid quarters of real estate taxes or the equivalent thereof, but
40 which shall in no event exceed twenty in number, shall be payable quar-
41 terly on the first days of July, October, January and April. For the
42 purposes of calculating the number of such remaining installments,
43 unpaid real estate taxes that are due and payable on other than a quar-
44 terly basis shall be deemed to be payable on a quarterly basis.

45 (7) A parcel for which any such installment agreement or agreements
46 have been filed with the commissioner shall be excluded or removed from
47 the list of delinquent taxes before the commencement of the in rem
48 action based upon such list only if the amounts paid pursuant to such
49 agreement exceed the amount required to pay all taxes and charges which
50 render said parcel eligible for inclusion in the in rem action and there
51 has been no default in such agreement prior to the commencement of said
52 action as to either quarterly installments or current taxes, assessments
53 or other legal charges.

54 (8) As a condition to entering into any agreement under this section
55 or section 11-409 of this chapter, the commissioner shall have received
56 from the applicant, an affidavit stating that each tenant located on the

1 parcel has been notified by certified mail that an application for an
2 installment agreement will be made and that a copy of a standard agree-
3 ment form has been included with such notification. Any false statement
4 in such affidavit shall not be grounds to cancel the agreement or affect
5 its validity in any way.

6 d. Two duplicate originals thereof, verified by the commissioner of
7 finance or a subordinate designated by the commissioner, shall be filed
8 in the office of the clerk of the county in which the parcels listed
9 therein are situated. Such filing shall constitute and have the same
10 force and effect as the filing and recording in such office of an indi-
11 vidual and separate notice of pendency of action and as the filing in
12 the supreme court in such county of an individual and separate complaint
13 by the city as to each parcel described in said list, to enforce the
14 payment of the delinquent taxes, assessments or other lawful charges
15 which have accumulated and become liens against such parcels.

16 e. Each county clerk with whom such a list of delinquent taxes is
17 filed shall, on the date of said filing, place and thereafter maintain
18 one duplicate original copy thereof, as separately and permanently bound
19 by the commissioner of finance, adjacent to and together with the block
20 index of notices of pendency of action and each county clerk shall, on
21 the date of said filing or as soon thereafter as with due diligence is
22 practicable, docket the parcels contained in the list of delinquent
23 taxes in said block index of notices of pendency of action, which shall
24 constitute due filing, recording and indexing of the separate notices
25 constituting said list of delinquent taxes in lieu of any other require-
26 ment under rule sixty-five hundred eleven of the civil practice law and
27 rules or otherwise.

28 f. The commissioner of finance shall file a copy of each list of
29 delinquent taxes, certified as such copy by him or her or a subordinate
30 designated by the commissioner, in the office of the corporation coun-
31 sel.

32 g. The validity of any proceeding hereunder shall not be affected by
33 any omission or error of the commissioner of finance in including or
34 excluding parcels from any such list or in the designation of a street
35 or street number or by any other similar omission or error.

36 § 11-406 Public notice of foreclosure. a. Upon the filing of a list of
37 delinquent taxes in the office of the county clerk, the commissioner of
38 finance forthwith shall cause a notice of foreclosure to be published at
39 least once a week for six successive weeks in the City Record and,
40 subject to section ninety-one of the judiciary law, in two newspapers,
41 one of which may be a law journal, to be designated by the commissioner
42 of finance, which are published in and are circulated throughout the
43 county in which the affected property is located. If there are no news-
44 papers published in such county, the commissioner of finance may desig-
45 nate newspapers published in the city of Staten Island which are circu-
46 lated throughout the affected county.

47 b. Such notice shall clearly indicate that it is a notice of foreclo-
48 sure of tax liens; the section of a tax map or portion of a section of a
49 tax map in which the properties subject to foreclosure are located and
50 where the area affected by the action includes less than all parcels in
51 a section of a tax map or portion of a section of a tax map, the partic-
52 ular class or classes contained therein, and by a general description
53 which need not contain measurements and direction; where and when the
54 list of delinquent taxes was filed; the general nature of the informa-
55 tion contained in the list; that the filing of the list constitutes
56 commencement of a foreclosure action by the city in the supreme court

1 for the particular county and a notice of pendency of action against
2 each parcel listed; that such action is against the property only and no
3 personal judgment will be entered; that the list will be available for
4 inspection at the city collector's central office and at the borough
5 office of the city collector in which said property is located until a
6 specified date at least ten weeks after the date of first publication;
7 that until such date a parcel may be redeemed by paying all taxes and
8 charges contained in said list of delinquent taxes together with inter-
9 est and penalties thereon; that during said period of redemption and for
10 an additional period of twenty days after said last date for redemption
11 any person having any interest in or lien upon a parcel on the list may
12 file with the appropriate county clerk and serve upon the corporation
13 counsel a verified answer setting forth in detail the full name of said
14 answering party, the nature and amount of his or her interest or lien
15 and any legal defense against foreclosure; and that in the absence of
16 redemption or answer a judgment of foreclosure may be taken by default.

17 c. On or before the date of the first publication of such notice, the
18 commissioner of finance shall cause a copy of the notice to be mailed to
19 all owners, mortgagees, lienors or encumbrancers, who may be entitled to
20 receive such notice by virtue of any owner's registration or in rem card
21 filed in the office of the city collector pursuant to section 11-416 or
22 11-417 of this chapter. If such owner's registration or in rem cards
23 have not been filed in the office of the city collector then said notice
24 shall be mailed to the name and address, if any, appearing in the latest
25 annual record of assessed valuations. The commissioner of finance shall
26 cause to be inserted with such notice a statement substantially in the
27 following form:

28 "To the party to whom the enclosed notice is addressed: You are the
29 presumptive owner or lienor of one or more of the parcels mentioned and
30 described in the list referred to in the attached notice. Unless the
31 taxes and assessments and all other legal charges are paid, or an answer
32 is interposed; or an arrangement is made for payment of such taxes and
33 assessments and all other legal charges in installments, as provided by
34 statute, the ownership of said property will in due course pass to the
35 city of Staten Island as provided by the administrative code of the city
36 of Staten Island."

37 The failure of the commissioner of finance to mail such notice shall
38 not affect the validity of any proceeding brought pursuant to this chap-
39 ter as to any parcel other than the parcel with respect to which notice
40 was not mailed.

41 d. The commissioner of finance shall cause a copy of such notice to be
42 posted in the office of the commissioner of finance, in the county
43 courthouse of the county in which the property subject to such tax lien
44 is situated and at three other conspicuous places in the city in which
45 the affected properties are located.

46 § 11-407 Redemption. a. After the filing of a list of delinquent taxes
47 and until a date at least ten weeks after the first publication of the
48 public notice of foreclosure, as determined by the commissioner of
49 finance and specified in the said notice, a person claiming to have an
50 interest in any parcel in said list may redeem it by paying all taxes
51 and charges contained in said list of delinquent taxes together with
52 interest and penalties thereon.

53 b. Upon such redemption the commissioner of finance shall deliver to
54 the corporation counsel a certificate of redemption. The corporation
55 counsel shall file such certificate with the clerk of the county in
56 which said list was filed. The filing of such certificate shall consti-

1 tute and be deemed a discontinuance of the in rem action as to the
2 affected parcel, and the county clerk shall thereupon note such redemp-
3 tion and discontinuance in the copy of the list of delinquent taxes
4 maintained by him or her adjacent to the county clerk's block index of
5 notices of pendency of action and shall cancel and discharge any
6 notations of the filing of said list of delinquent taxes as to said
7 parcel that may appear in any other books, records, indices and dockets
8 maintained in said clerk's office. The commissioner of finance shall
9 also deliver a duplicate original certificate of redemption to the
10 person who has redeemed.

11 c. When the time to redeem in an in rem tax foreclosure action has
12 expired, any person claiming to have an interest in a parcel included in
13 said action shall have the right to make a late redemption payment to
14 the commissioner of finance. Such late redemption payment shall consist
15 of all taxes and charges owing on said parcel, the lawful interest ther-
16 eon to the date of payment and a penalty of five percent of said payment
17 of taxes, charges and interest, which penalty may not exceed one thou-
18 sand dollars as to each parcel on which a late redemption payment is
19 being made. Such late redemption payment shall be made in cash or by
20 certified or bank check and shall be accepted by the commissioner of
21 finance at any time after the last day to redeem up to the date on which
22 the commissioner is advised by the corporation counsel that the prepara-
23 tion of the judgment of foreclosure in the in rem action has been
24 commenced. Upon receipt of such late redemption payment, the commission-
25 er of finance shall issue a certificate of withdrawal pursuant to the
26 provisions of section 11-413 of this chapter.

27 § 11-408 Filing of affidavits. All affidavits of filing, publication,
28 posting, mailing or other acts required by this chapter shall be made by
29 the person or persons performing such acts and shall be filed in the
30 office of the county clerk of the county in which the property subject
31 to such tax lien is situated and shall together with all other documents
32 required by this chapter to be filed in the office of such county clerk,
33 constitute and become a part of the judgment roll in such foreclosure
34 action.

35 § 11-409 Severance and trial of issues where answer is interposed;
36 installment agreements authorized after action commenced. a. If a duly
37 verified answer is served upon the corporation counsel not later than
38 twenty days after the last date for redemption, the answering defendant
39 shall have the right to a severance of the action, as to any parcel in
40 which the defendant has pleaded an interest, upon written demand there-
41 for filed with or made a part of his or her answer.

42 b. When such answer is interposed, the court shall summarily hear and
43 determine the issues raised by the complaint and answer in the same
44 manner as it hears and determines other actions, except as herein other-
45 wise provided. Proof that the taxes which made said property subject to
46 foreclosure hereunder together with interest and penalties thereon, were
47 paid before filing of the list of delinquent taxes or that the property
48 was not subject to tax shall constitute a complete defense.

49 c. No counterclaim may be asserted in an answer interposed in an
50 action brought pursuant to this chapter. Where a counterclaim is
51 asserted in an in rem answer the city may disregard that portion of the
52 answer and shall suffer no legal penalty or impediment in the prose-
53 cution of its in rem action for its failure to reply or respond thereto.
54 Where an answer contains only a counterclaim and no other defenses the
55 city may proceed to judgment of foreclosure against the property
56 affected without the need for moving against the answer.

1 d. When a verified answer alleges a substantial equity over the city's
2 lien for taxes, the defendant may demand additional time in which to pay
3 the taxes and interest or to have the property sold with all taxes and
4 interest to be paid out of the proceeds of such sale. Upon such demand a
5 defendant shall have the right to an extension of time for such purpose
6 not in excess of six months from the last day to interpose an answer.
7 Where a mortgagee or lienor who has interposed such answer commences a
8 proceeding to foreclose his or her mortgage or lien and it appears that
9 with due diligence such proceeding cannot be concluded in time to allow
10 the payment of taxes within the aforesaid six month period, the court
11 may, on application before the end of said six month period, authorize
12 an additional period during which such proceeding may be concluded and
13 the taxes, together with interest and penalties, paid.

14 e. Where an answer of the type described in subdivision d of this
15 section is interposed and taxes are paid within the period set forth in
16 such subdivision, the commissioner of finance shall issue a certificate
17 of withdrawal as to the property on which such payment has been made
18 pursuant to the provisions of section 11-413 of this chapter. When taxes
19 are not paid within the period set forth in subdivision d of this
20 section, it shall be deemed that there was no equity over the city's tax
21 liens and the answer shall be deemed to be without merit. The city in
22 that event may proceed to judgment of foreclosure against such property
23 without moving against the answer.

24 f. All answers interposed in an action hereunder and all affidavits
25 and other papers pertaining to any litigation involving such answers or
26 to any proceeding brought pursuant to this chapter involving less than
27 an entire action shall bear a caption containing the in rem action
28 number of the city's tax foreclosure proceeding, the section of a tax
29 map or portion of a section of a tax map affected, and if the action
30 covers less than all parcels in the section of a tax map or portion of a
31 section of a tax map, the particular class or classes, and the serial,
32 section, block and lot numbers of the parcel or parcels in issue.

33 g. The corporation counsel, when submitting an in rem judgment roll
34 pursuant to the provisions of this chapter, may request a severance as
35 to any parcel on which an in rem answer or litigation is pending, or as
36 to which, before the preparation of said in rem judgment roll is
37 commenced, an agreement was duly made, executed and filed with the
38 commissioner of finance for the payment of the delinquent taxes, assess-
39 ments or other legal charges and interest and penalties in installments
40 as provided in subdivision c of section 11-405 of this chapter and there
41 has been no default in such agreement as to either quarterly install-
42 ments or current taxes, assessments or other legal charges. Where such
43 an agreement is entered into subsequent to the last date for redemption
44 specified in subdivision a of section 11-407 of this chapter, there
45 shall be paid to the commissioner of finance at the time the aforesaid
46 agreement is executed an amount equal to the penalty which would have
47 been payable under subdivision c of section 11-407 of this chapter had
48 the person executing the agreement made a late redemption payment. Such
49 amount shall be in addition to any installment payments required to be
50 made under the agreement and shall not be credited against any such
51 installment payments. Where a default occurs in such agreement as to
52 either quarterly installments or current taxes, assessments or other
53 legal charges, all payments made under the agreement shall be forfeited
54 and the city shall be entitled to acquire the parcel as to which the
55 default occurred. Where such default occurs before the submission of the
56 judgment roll, the parcels as to which such default occurs shall be

1 included in said judgment roll among the parcels to be acquired by the
2 city. Where such default has occurred as to a parcel severed pursuant to
3 this subdivision, the corporation counsel shall cause to be entered a
4 supplemental judgment of foreclosure as to such parcel immediately on
5 notification by the commissioner of finance of such default. Where such
6 installment agreement is paid in full the commissioner of finance shall
7 discontinue the in rem action from which said parcel was severed by
8 issuing a certificate of withdrawal as to said parcel pursuant to the
9 provisions of section 11-413 of this chapter.

10 h. A party who has interposed an answer as to any parcel included in
11 an in rem tax foreclosure action, or any other party interested in such
12 parcel, shall have the right, at any time prior to the final disposition
13 of a motion to strike said answer, to pay all taxes, assessments and
14 other legal charges and interest owing on said parcel. An answering
15 party who makes such payment shall not be required to pay any penalty.
16 Where such payment is made by other than an answering party after the
17 expiration of the period of redemption, there shall be paid to the
18 commissioner of finance an additional amount equal to the penalty paya-
19 ble under subdivision c of section 11-407 of this chapter. Where all
20 delinquent taxes, assessments and other legal charges together with
21 lawful interest thereon and penalties, where required, are paid, the
22 commissioner of finance shall issue a certificate of withdrawal as to
23 said parcel pursuant to the provisions of section 11-413 of this chap-
24 ter. Said parties may also pay such taxes, assessments and other legal
25 charges and interest by an installment agreement. Where such agreement
26 is requested before the preparation of the aforesaid in rem judgment
27 roll is commenced, the terms of said agreement shall be consistent with
28 the provisions of subdivision g or i of this section, whichever is
29 applicable. Where such agreement is requested after judgment of foreclo-
30 sure has been entered in the in rem action in which the aforesaid answer
31 was interposed, said agreement shall require a first installment of
32 fifty percent of all taxes, assessments and other legal charges and
33 interest owing on said parcel, a penalty of five percent of all such
34 taxes, assessments and other legal charges and interest, which penalty
35 may not exceed one thousand dollars, and the payment of the balance of
36 such taxes, assessments and other legal charges and interest in four
37 equal quarterly installments together with all current taxes, assess-
38 ments and other legal charges that accrue during such period. The
39 request of an answering party for an installment agreement shall consti-
40 tute a withdrawal of such party's answer. An installment agreement
41 requested by an interested party other than the answering party shall
42 require the consent of said answering party which shall also constitute
43 a withdrawal of such party's answer. The severance provided for in this
44 section shall be continued during the term of all installment agreements
45 entered into pursuant to the provisions of this subdivision. Where a
46 default has occurred as to a parcel severed pursuant to this subdivi-
47 sion, the corporation counsel shall cause to be entered a supplemental
48 judgment of foreclosure as to such parcel immediately on notification by
49 the commissioner of finance of such default. Where such installment
50 agreement is paid in full, the commissioner of finance shall discontinue
51 the in rem action from which said parcel was severed by issuing a
52 certificate of withdrawal as to said parcel pursuant to the provisions
53 of section 11-413 of this chapter.

54 i. (1) Notwithstanding subdivision g of this section, this subdivision
55 shall apply with respect to installment agreements made, executed and
56 filed with the commissioner of finance on or after the date on which

1 this subdivision takes effect. An installment agreement pursuant to this
2 subdivision may be made, executed and filed with such commissioner
3 during the period beginning on the date on which an action is commenced
4 as provided in subdivision d of section 11-405 of this chapter with
5 respect to the parcel that is the subject of such agreement and ending
6 on the date on which such commissioner is advised by the corporation
7 counsel that the preparation of the judgment of foreclosure in such in
8 rem action has been commenced. Notwithstanding anything to the contrary,
9 and except to the extent provided in paragraph two of this subdivision,
10 the provisions of paragraphs one through six of subdivision c of section
11 11-405 of this chapter shall not apply to any installment agreement
12 requested on or after the date on which this subdivision takes effect
13 and on or after the date on which an action is commenced as provided in
14 subdivision d of such section 11-405 with respect to the parcel that is
15 the subject of such requested agreement.

16 (2) An agreement entered into pursuant to this subdivision shall
17 provide for the payment in installments of the delinquent taxes, assess-
18 ments and other legal charges, and the interest and penalties thereon,
19 due and owing as of the date on which such agreement is requested.
20 Unless an eligible owner or other interested person requests an agree-
21 ment pursuant to the provisions of paragraph three of this subdivision,
22 the terms of such agreement with respect to a parcel shall be the same
23 as the terms that would be applicable to such parcel under paragraph
24 four, five or six, as the case may be, of subdivision c of section
25 11-405 of this chapter, except that, for purposes of the agreement
26 pursuant to this paragraph, the amount of the first installment shall be
27 equal to: (i) fifteen percent of the total amount due in the case of a
28 parcel described in paragraph four of subdivision c of section 11-405 of
29 this chapter; (ii) twenty percent of the total amount due in the case of
30 a parcel described in paragraph five of subdivision c of section 11-405
31 of this chapter; and (iii) twenty-five percent of the total amount due
32 in the case of a parcel described in paragraph six of subdivision c of
33 section 11-405 of this chapter.

34 (3) Instead of an agreement pursuant to paragraph two of this subdivi-
35 sion, an eligible owner or other interested party may request an agree-
36 ment pursuant to the following provisions:

37 (i) With respect to a parcel that is owned by a company organized
38 pursuant to article eleven of the state private housing finance law with
39 the consent and approval of the department of housing preservation and
40 development, such agreement shall provide for the payment in install-
41 ments of the delinquent taxes, assessments and other legal charges, and
42 the interest and penalties thereon, due and owing as of the date on
43 which such agreement is requested. The first installment thereof shall
44 be paid upon the filing of the installment agreement with the commis-
45 sioner of finance and shall be in an amount at least equal to, at the
46 applicant's election, either thirty-five percent or fifty percent of the
47 total amount of such delinquent taxes, assessments or other legal charg-
48 es and the interest and penalties thereon. The remaining installments,
49 which shall be three times the number of unpaid quarters of real estate
50 taxes or the equivalent thereof, but which shall in no event exceed
51 thirty-two in number, shall be payable quarterly on the first days of
52 July, October, January and April, together with interest at the rate or
53 rates determined as provided in subparagraph (iv) of this paragraph. For
54 the purposes of calculating the number of such remaining installments,
55 unpaid real estate taxes that are due and payable on other than a quar-
56 terly basis shall be deemed to be payable on a quarterly basis.

1 (ii) With respect to a parcel, other than a parcel described in
2 subparagraph (i) of this paragraph, that is a residential building
3 containing not more than five residential units, a residential condomin-
4 ium unit or a residential building held in a cooperative form of owner-
5 ship, such agreement shall provide for the payment in installments of
6 the delinquent taxes, assessments and other legal charges, and the
7 interest and penalties thereon, due and owing as of the date on which
8 such agreement is requested. The first installment thereof shall be paid
9 upon the filing of the installment agreement with the commissioner of
10 finance and shall be in an amount at least equal to, at the applicant's
11 election, either twenty-five percent or fifty percent of the total
12 amount of such delinquent taxes, assessments or other legal charges and
13 the interest and penalties thereon. The remaining installments, which
14 shall be three times the number of unpaid quarters of real estate taxes
15 or the equivalent thereof, but which shall in no event exceed twenty in
16 number, shall be payable quarterly on the first days of July, October,
17 January and April together with interest at the rate or rates determined
18 as provided in subparagraph (iv) of this paragraph. For the purposes of
19 calculating the number of such remaining installments, unpaid real
20 estate taxes that are due and payable on other than a quarterly basis
21 shall be deemed to be payable on a quarterly basis.

22 (iii) With respect to any parcel of class one or class two real prop-
23 erty, other than a parcel described in subparagraph (i) or (ii) of this
24 paragraph, such agreement shall provide for the payment in installments
25 of the delinquent taxes, assessments and other legal charges, and the
26 interest and penalties thereon, due and owing as of the date on which
27 such agreement is requested. The first installment thereof shall be paid
28 upon the filing of the installment agreement with the commissioner of
29 finance and shall be in an amount at least equal to, at the applicant's
30 election, either thirty-five percent or fifty percent of the total
31 amount of such delinquent taxes, assessments or other legal charges and
32 the interest and penalties thereon. The remaining installments, which
33 shall be twice the number of unpaid quarters of real estate taxes or the
34 equivalent thereof, but which shall in no event exceed twenty in number,
35 shall be payable quarterly on the first days of July, October, January
36 and April, together with interest at the rate or rates determined as
37 provided in subparagraph (iv) of this paragraph. For the purposes of
38 calculating the number of such remaining installments, unpaid real
39 estate taxes that are due and payable on other than a quarterly basis
40 shall be deemed to be payable on a quarterly basis.

41 (iv) (A) Notwithstanding any higher rate of interest prescribed pursu-
42 ant to applicable law, and unless a lower rate of interest is applicable
43 to a delinquent amount owing on a parcel that is the subject of an
44 agreement pursuant to this paragraph, the interest payable together with
45 the remaining installments due under such agreement shall be:

46 (I) with respect to an agreement for which a twenty-five percent or
47 thirty-five percent down payment was made, calculated at a rate equal to
48 the sum of (a) the rate prescribed for the applicable period pursuant to
49 paragraph (i) of subdivision e of section 11-224.1 of this title and (b)
50 one-half of the difference between such rate and the rate prescribed for
51 such period pursuant to paragraph (ii) of subdivision e of section
52 11-224.1 of this title; or

53 (II) with respect to an agreement for which a fifty percent down
54 payment was made, calculated at a rate equal to the rate prescribed for
55 the applicable period pursuant to paragraph (i) of subdivision e of
56 section 11-224.1 of this title.

1 (B) If a default occurs in any agreement executed pursuant to this
2 paragraph as to either quarterly installments or current taxes, assess-
3 ments or other legal charges, the rates of interest determined under
4 this subparagraph shall thereupon cease to be applicable and the commis-
5 sioner of finance shall thereafter charge, collect and receive interest
6 in the manner and at the rates otherwise prescribed pursuant to law.

7 (4) The corporation counsel, when submitting an in rem judgment roll
8 pursuant to the provisions of this chapter, may request a severance as
9 to any parcel as to which, before the preparation of said in rem judg-
10 ment roll is commenced, an agreement was duly made, executed and filed
11 with the commissioner of finance for the payment of all delinquent
12 taxes, assessments and other legal charges and interest and penalties in
13 installments as provided in this subdivision, and there has been no
14 default in such agreement as to either quarterly installments or current
15 taxes, assessments or other legal charges. Where such an agreement is
16 entered into subsequent to the last date for redemption specified in
17 subdivision a of section 11-407 of this chapter, there shall be paid to
18 the commissioner of finance at the time such agreements are executed an
19 amount equal to the penalty that would have been payable under subdivi-
20 sion c of section 11-407 of this chapter had the person executing the
21 agreement made a late redemption payment. Such amount shall be in addi-
22 tion to any installment payments required to be made under the agreement
23 and shall not be credited against any such installment payments. Where a
24 default occurs in such agreement as to either quarterly installments or
25 current taxes, assessments or other legal charges, all payments made
26 under the agreement shall be forfeited and the city shall be entitled to
27 obtain a judgment hereunder as to the parcel as to which the default
28 occurred. Where such default occurred before the submission of the judg-
29 ment roll, the parcels as to which such default occurs shall be included
30 in said judgment roll amount the parcels to be acquired by the city or
31 by a third party. Where such default has occurred as to a parcel severed
32 pursuant to this subdivision, the corporation counsel shall cause to be
33 entered a supplemental judgment of foreclosure as to such parcel imme-
34 diately on notification by the commissioner of finance of such default.
35 Where such installment agreement is paid in full, the commissioner of
36 finance shall discontinue the in rem action from which such parcel was
37 severed by issuing a certificate of withdrawal as to such parcel pursu-
38 ant to the provisions of section 11-413 of this chapter.

39 § 11-410 Preference over other actions. a. Any action brought pursuant
40 to this chapter shall be given preference over all other causes and
41 actions.

42 b. Actions brought pursuant to this chapter shall take precedence over
43 any proceeding brought to foreclose a mortgage or other lien involving
44 the same property. A parcel included in a list of delinquent taxes
45 which is sold in a mortgage foreclosure sale held after said list is
46 filed may not be sold subject to taxes even if judgment has not yet been
47 entered in the tax foreclosure action. All unpaid taxes and interest and
48 penalties thereon must be paid, in full or by installment agreement
49 pursuant to the provisions of this chapter, out of the proceeds of such
50 sale regardless of whether the mortgage foreclosure lis pendens was
51 filed before or after the filing of the tax foreclosure action, regard-
52 less of whether any party to the mortgage foreclosure proceeding has
53 interposed an answer in the tax foreclosure action and regardless of any
54 terms to the contrary in the judgment in the mortgage foreclosure
55 proceeding.

1 § 11-411 Presumption of validity. It shall not be necessary for the
2 city to plead or prove the various steps, procedures and notices for the
3 assessment and levy of the taxes, assessments or other lawful charges
4 against the parcels set forth in the list of delinquent taxes and all
5 such taxes, assessments or other lawful charges and the lien thereof
6 shall be presumed to be valid. A defendant alleging any jurisdictional
7 defect or invalidity in such taxes, assessments or other lawful charges
8 or in the foreclosure thereof must particularly specify in his or her
9 answer such jurisdictional defect or invalidity and must affirmatively
10 establish such defense. A judgment of foreclosure granted in any
11 proceeding brought pursuant to this chapter, which contains recitals
12 that any acts were done or proceedings had which were necessary to give
13 the court jurisdiction or power to grant such judgment of foreclosure,
14 shall be presumptive evidence that such acts were duly performed or
15 proceedings duly had, if such judgment of foreclosure shall have been
16 duly entered or filed in the office of the clerk of the county in which
17 the proceeding was pending and wherein such judgment was granted. The
18 provisions of this chapter shall apply to and be valid and effective
19 with respect to all defendants even though one or more of them be
20 infants, incompetents, absentees or non-residents of the state of New
21 York.

22 § 11-412 Final judgment. a. The court shall determine upon proof and
23 shall make finding upon such proof whether there has been due compliance
24 by the city with the provisions of this chapter.

25 b. The court shall make a final judgment awarding to the city the
26 possession of any parcel described in the list of delinquent taxes not
27 redeemed or withdrawn as provided in this chapter and as to which no
28 answer is interposed as provided herein. In addition thereto, such judg-
29 ment shall contain a direction to the commissioner of finance to
30 prepare, execute and cause to be recorded a deed conveying to the city
31 full and complete title to such lands. Upon the execution of such deed,
32 the city shall be seized of an estate in fee simple absolute in such
33 land and all persons, including the state of New York, infants, incompe-
34 tents, absentees and non-residents who may have had any right, title,
35 interest, claim, lien or equity of redemption in or upon such lands
36 shall be barred and forever foreclosed of all such right, title, inter-
37 est, claim, lien or equity of redemption, except as otherwise provided
38 in section 11-424 of this chapter. The appointment and tenure of receiv-
39 ers, trustees or any other persons, including administrators under arti-
40 cle seven-A of the real property actions and proceedings law, appointed
41 by an order of a court to manage real property, shall terminate when
42 title to such property vests in the city pursuant to the provisions of
43 this chapter. After such termination, said receivers, trustees or admin-
44 istrators shall be accountable to the courts that appointed them for the
45 faithful performance of their fiduciary obligations during the term of
46 their appointment and to the city for any rents and income received by
47 them for any period subsequent to the date of the vesting of title in
48 the city.

49 If the city serves a tenant in possession of a dwelling unit with
50 notice of termination of tenancy on grounds other than non-payment of
51 rent, the acceptance of rent for the first forty-five days after termi-
52 nation of tenancy by anyone other than an employee of the department
53 designated by the department to receive such rent shall not be deemed or
54 construed as a waiver of the city's right to initiate and prosecute a
55 proceeding to terminate the tenancy for good cause.

1 c. Every deed given pursuant to the provisions of this section shall
2 be presumptive evidence that the action and all proceedings therein and
3 all proceedings prior thereto from and including the assessment of the
4 lands affected and all notices required by law were regular and in
5 accordance with all provisions of law relating thereto. After two years
6 from the date of the recording of such deed, the presumption shall be
7 conclusive, unless at the time that this subdivision takes effect the
8 two year period since the recording of the deed has expired or less than
9 six months of such period of two years remains unexpired, in which case
10 the presumption shall become conclusive six months after this subdivi-
11 sion takes effect. No action to set aside such deed may be maintained
12 unless the action is commenced and a notice of pendency of the action is
13 filed in the office of the proper county clerk prior to the time that
14 the presumption becomes conclusive as aforesaid.

15 § 11-412.1 Special procedures relating to final judgment and release
16 of class one and class two real property. Notwithstanding any other
17 provision of law to the contrary:

18 a. The court shall determine upon proof and shall make a finding upon
19 such proof whether there has been due compliance by the city with the
20 applicable provisions of this chapter.

21 b. (1) The court shall make a final judgment authorizing the award of
22 possession of any parcel of class one or class two real property
23 described in the list of delinquent taxes not redeemed or withdrawn as
24 provided in this chapter and as to which no answer is interposed as
25 provided herein, and authorizing the commissioner of finance to prepare,
26 execute and cause to be recorded a deed conveying either to the city or
27 to a third party deemed qualified and designated by the commissioner of
28 housing preservation and development full and complete title to such
29 lands. Any such conveyance to a third party shall be for an existing
30 use.

31 (2) Such third party shall be deemed qualified and shall be designated
32 pursuant to such criteria as are established in rules promulgated by the
33 commissioner of housing preservation and development, provided, however,
34 that such criteria shall include but not be limited to: residential
35 management experience; financial ability; rehabilitation experience;
36 ability to work with government and community organizations; neighbor-
37 hood ties; and that the commissioner shall consider whether the third
38 party is a responsible legal tenant, not-for-profit organization or
39 neighborhood-based-for-profit individual or organization. The commis-
40 sioner shall not deem qualified any third party who has been finally
41 adjudicated by a court of competent jurisdiction, within seven years of
42 the date on which such third party would otherwise be deemed qualified,
43 to have violated any section of article one hundred fifty, one hundred
44 seventy-five, one hundred seventy-six, one hundred eighty, one hundred
45 eighty-five or two hundred of the penal law or any similar laws of
46 another jurisdiction, or who has been suspended or debarred from
47 contracting with the city or any agency of the city pursuant to section
48 335 of the charter during the period of such suspension or debarment.
49 The rules promulgated by the commissioner pursuant to this paragraph may
50 establish other bases for disqualification of a third party.

51 c. Following the expiration of the four-month period prescribed in
52 subdivision d of this section, but not more than eight months after the
53 date on which, pursuant to subdivision b of this section, the final
54 judgment authorizing the award of possession of a parcel of class one or
55 class two real property was entered, the commissioner of finance may
56 execute a deed, pursuant to subdivision b of this section, with respect

1 to such parcel. The owner of said parcel shall continue to have all of
2 the rights, liabilities, responsibilities, duties and obligations of an
3 owner of such parcel, including, but not limited to, maintaining such
4 parcel in compliance with the housing maintenance, building and fire
5 codes, and all other applicable laws, unless and until the commissioner
6 of finance has prepared and executed a deed conveying to the city or to
7 a third party full and complete title to such parcel. Upon the execution
8 of such deed, the city or the third party shall be seized of an estate
9 in fee simple absolute in such land and all persons, including the state
10 of New York, infants, incompetents, absentees and non-residents who may
11 have had any right, title, interest, claim, lien or equity of redemption
12 in or upon such lands shall be barred and forever foreclosed of all such
13 right, title, interest, claim, lien or equity of redemption, except as
14 otherwise provided in subdivisions e and f of this section. The appoint-
15 ment and tenure of receivers, trustees or any other persons, including
16 administrators under article seven-A of the real property actions and
17 proceedings law, appointed by an order of a court to manage real proper-
18 ty, shall terminate when title to such property vests in the city or a
19 third party pursuant to the provisions of this chapter. After such
20 termination, said receivers, trustees or administrators shall be
21 accountable to the courts that appointed them for the faithful perform-
22 ance of their fiduciary obligations during the term of their appointment
23 and to the city or such third party for any rents and income received by
24 them for any period subsequent to the date of the vesting of title in
25 the city or such third party.

26 If the city serves a tenant in possession of a dwelling unit with
27 notice of termination of tenancy on grounds other than nonpayment of
28 rent, the acceptance of rent for the first forty-five days after termi-
29 nation of tenancy by anyone other than an employee of the department
30 designated by the department to receive such rent shall not be deemed or
31 construed as a waiver of the city's right to initiate and prosecute a
32 proceeding to terminate the tenancy for good cause.

33 d. Within four months after the date on which, pursuant to subdivision
34 b of this section, the final judgment authorizing the award of
35 possession of a parcel of class one or class two real property was
36 entered, any person claiming to have an interest in such parcel shall
37 have the right to make a payment to the commissioner of finance consist-
38 ing of all taxes, assessments and other legal charges owing on said
39 parcel, the lawful interest thereon to the date of payment and a penalty
40 of five percent of said payment of taxes, assessments and other legal
41 charges and interest, which penalty may not exceed one thousand dollars.
42 Such payment shall be made in cash or by certified or bank check. Within
43 such four-month period, such interested person may also request an
44 installment agreement from the commissioner of finance. Such agreement
45 shall require, in addition to full payment of the penalty specified in
46 this subdivision at the time such agreement is entered into, the payment
47 at such time of a first installment equal to fifty percent of all taxes,
48 assessments and other legal charges, and the lawful interest thereon,
49 then owing on such parcel, and the payment of the balance of such taxes,
50 assessments and other legal charges and interest in four equal quarterly
51 installments together with all current taxes, assessments and other
52 legal charges that accrue during such period. Upon receipt of payment in
53 full of the amount specified in this subdivision, the commissioner of
54 finance shall direct the corporation counsel to prepare and cause to be
55 entered an order discontinuing the in rem tax foreclosure action as to
56 said property, cancelling the notice of pendency of such action as to

1 said property and vacating and setting aside the final judgment. Upon
2 the execution of an installment agreement and payment of the amounts due
3 at the time such agreement is executed as provided in this subdivision,
4 the commissioner of finance shall direct the corporation counsel to
5 prepare and cause to be entered an order vacating and setting aside the
6 final judgment. The entry of either such order shall restore all
7 parties, including owners, mortgagees and any and all lienors, receivers
8 and administrators and encumbrancers, to the status they held immediate-
9 ly before such final judgment was entered. Where the commissioner of
10 finance approves an application requesting an installment agreement
11 pursuant to this subdivision, the order vacating and setting aside the
12 final judgment shall provide that in the event of any default as to the
13 payment of either quarterly installments or current taxes, assessments
14 or other legal charges during the term of such agreement, all payments
15 under said agreement shall be forfeited and the corporation counsel,
16 immediately upon notification by the commissioner of finance of such
17 default, shall cause to be entered as to such property a supplemental
18 judgment of foreclosure in the in rem action which authorizes the
19 commissioner of finance to prepare, execute and cause to be recorded a
20 deed conveying either to the city or to a third party full and complete
21 title to such lands. Upon the entry of such supplemental judgment, the
22 provisions of subdivisions c through i of this section shall apply in
23 the same manner as such subdivisions would have applied had no payment
24 been made nor installment agreement executed during the four-month peri-
25 od specified in this subdivision.

26 e. 1. If the commissioner of finance has prepared, executed and caused
27 to be recorded a deed conveying to the city full and complete title to a
28 parcel of class one or class two real property acquired by in rem tax
29 foreclosure, the city's interest in such parcel may be released pursuant
30 to this subdivision on the application of any party who has an interest
31 in said parcel as either owner, mortgagee, lienor, or encumbrancer at
32 the time of the city's acquisition thereof where such application is
33 made at any time up to sixteen months from the date on which the deed by
34 which the city acquired title to said parcel was recorded.

35 2. Any such application shall be made in writing to the commissioner
36 of general services and shall be verified. It shall contain the informa-
37 tion required pursuant to paragraph one of subdivision b of section
38 11-424 of this chapter, the documents required by subdivision c of such
39 section, and shall be accompanied by the fees required by paragraphs
40 three and six of subdivision b of such section. The fee required by
41 paragraph three of subdivision b of section 11-424 of this chapter shall
42 not be refundable.

43 3. The city's interest in any such parcel shall be released only after
44 payment of the sums of money specified in subdivision d of section
45 11-424 of this chapter.

46 4. The provisions contained in subdivision g of section 11-424 of this
47 chapter shall govern such an application, except as follows:

48 (a) where such provisions are inconsistent with the provisions
49 contained in this subdivision, the provisions contained in this subdivi-
50 sion shall govern such application; and

51 (b) where the in rem foreclosure release board denies a written
52 request for an installment agreement that was filed in connection with
53 an application for release of the city's interest in a parcel of class
54 one or class two real property and such application was filed within
55 thirty days of the date of the city's acquisition of the property sought
56 to be released, the board may, in its discretion, authorize a release of

1 the city's interest, provided that the applicant thereafter pays all the
2 amounts required to be paid pursuant to subdivision d of section 11-424
3 of this chapter within thirty days of the date on which a letter
4 requesting such payment is mailed or delivered to such applicant.

5 5. Upon receipt of all the amounts required to be paid pursuant to
6 this subdivision, the commissioner of finance shall direct the corpo-
7 ration counsel to prepare and cause to be entered an order discontinuing
8 the in rem tax foreclosure action as to said property, cancelling the
9 notice of pendency of such action as to said property and vacating and
10 setting aside the final judgment entered pursuant to subdivision b of
11 this section and the deed executed and recorded pursuant to such final
12 judgment as to said property. The entry of such order shall restore all
13 parties, including owners, mortgagees and any and all lienors, receivers
14 and administrators and encumbrancers, to the status they held immedi-
15 ately before the final judgment was entered, as if the in rem tax foreclo-
16 sure had never taken place, and shall render said property liable for
17 all taxes, deficiencies, management fees and liens which shall accrue
18 subsequent to those paid in order to obtain the release provided for in
19 this subdivision, or which were, for whatever reason, omitted from the
20 payment made to obtain said release.

21 f. If the commissioner of finance has prepared, executed and caused to
22 be recorded a deed conveying to the city full and complete title to a
23 parcel of class one or class two real property acquired by in rem tax
24 foreclosure and such parcel is entitled to an exemption under any of the
25 provisions of article four of the real property tax law during all or
26 part of the period covered by the tax items appearing on a list of
27 delinquent taxes, the owner of such parcel may apply for a release of
28 the city's interest in such exempt property under the provisions of
29 subdivision e of this section during the period of time set forth in
30 paragraph one of such subdivision and for an additional period up to ten
31 years from the date on which the deed by which the city acquired title
32 to said property was recorded. The application of such owner shall be
33 accompanied by the nonrefundable fee required by paragraph four of
34 subdivision b of section 11-424 of this chapter and shall contain, in
35 addition to the statements, searches and proofs required by subdivi-
36 sion e of this section, a statement that an exemption under the real property
37 tax law is being claimed. Such application shall also state either that
38 it is accompanied by the written certificate of the comptroller setting
39 forth the precise period during which said property, while owned by such
40 application, and during the period after the city's acquisition up to
41 the date of the certificate if said property was still being used for an
42 exempt purpose after said acquisition, was entitled to an exemption and
43 the exact nature and extent of such exemption or that an application for
44 such written certificate has been filed with the comptroller. On issuing
45 such written certificate, the comptroller shall cancel those tax items
46 which have accrued during the period covered by the certificate to the
47 extent the applicant is entitled to an exemption as set forth in the
48 certificate. A release of the city's interest may be authorized only at
49 the discretion of the in rem foreclosure release board and, except as
50 otherwise provided in paragraph four of subdivision e of this section,
51 subject to all the restrictions set forth in subdivision g of section
52 11-424 of this chapter. A release to an exempt applicant shall be
53 effected only after said applicant has paid all of the amounts required
54 to be paid by subdivision d of section 11-424 of this chapter, except
55 for those tax items which have been canceled, in whole or in part,
56 pursuant to the comptroller's certificate, within thirty days of the

1 date on which the letter requesting payment is mailed or delivered to
2 the applicant.

3 g. If the commissioner of finance has prepared, executed and caused to
4 be recorded a deed conveying to the city or to a third party full and
5 complete title to a parcel of class one or class two real property
6 acquired by in rem tax foreclosure, the provisions contained in subdivi-
7 sions f and i of section 11-424 of this chapter for the release of prop-
8 erty so acquired shall not be available. If the commissioner of finance
9 has prepared, executed and caused to be recorded a deed conveying to a
10 third party full and complete title to a parcel of class one or class
11 two real property acquired by in rem tax foreclosure, the provisions
12 contained in subdivisions e and f of this section for the release of
13 property so acquired shall not be available.

14 h. Every deed given pursuant to the provisions of this section shall
15 be presumptive evidence that the action and all proceedings therein and
16 all proceedings prior thereto from and including the assessment of the
17 lands affected and all notices required by law were regular and in
18 accordance with all provisions of law relating thereto. After four
19 months from the date of entry of the final judgment authorizing the
20 award of possession of any parcel of class one or class two real proper-
21 ty pursuant to the provisions of this section, the presumption shall be
22 conclusive. No action to set aside such deed may be maintained unless
23 the action is commenced and a notice of pendency of the action is filed
24 in the office of the property county clerk prior to the time that the
25 presumption becomes conclusive as aforesaid. Should any lawsuit or
26 proceeding be commenced to set aside a deed conveying to a third party a
27 parcel of class one or class two real property pursuant to the
28 provisions of this section, such third party shall send to the corpo-
29 ration counsel within ten days of their receipt a copy of any papers
30 served on such third party in such lawsuit or proceeding.

31 i. If the commissioner of finance does not execute a deed conveying to
32 the city or to a third party a parcel of class one or class two real
33 property within eight months after the entry of final judgment authoriz-
34 ing the award of possession of such parcel pursuant to subdivision b of
35 this section, the commissioner of finance shall direct the corporation
36 counsel to prepare and cause to be entered an order discontinuing the in
37 rem foreclosure action as to said property, canceling the notice of
38 pendency of such action as to said property and vacating and setting
39 aside said final judgment. The entry of such order shall restore all
40 parties, including owners, mortgagees and any and all lienors, receivers
41 and administrators and encumbrancers, to the status they held immedi-
42 ately before such final judgment was entered.

43 j. If the commissioner of finance directs the corporation counsel,
44 pursuant to subdivision i of this section, to prepare and cause to be
45 entered an order discontinuing the in rem foreclosure action with
46 respect to a parcel of class one or class two real property determined
47 to be distressed pursuant to section 11-401.1 of this chapter, the
48 commissioner of housing preservation and development shall evaluate the
49 parcel determined to be distressed and take such action as he or she
50 deems appropriate under the programs, existing at the time of such eval-
51 uation, that are designed to encourage the rehabilitation and preserva-
52 tion of existing housing, and shall monitor or cause to be monitored the
53 status of the property. The commissioner of housing preservation and
54 development shall maintain a register of properties determined to be
55 distressed.

1 § 11-412.2 Council review of conveyance to a third party. The commis-
2 sioner of finance shall, prior to the execution of a deed conveying full
3 and complete title of any parcel of class one or class two real property
4 to a third party pursuant to subdivision c of section 11-412.1 of this
5 chapter, notify the council of the proposed conveyance. Within forty-
6 five days of such notification, the council may act by local law disap-
7 proving the proposed conveyance. In the event the council does not act
8 by local law within such forty-five day period, the council shall be
9 deemed to have approved the proposed conveyance. During such forty-five
10 day period or, if the city council acts by local law pursuant to this
11 section, during the period of time from the notification of the council
12 to the presentation to the mayor of such local law and during any addi-
13 tional period of time prescribed in section 37 of the charter, the
14 eight-month period provided in subdivisions c and i of section 11-412.1
15 of this chapter shall be tolled.

16 § 11-413 Withdrawal of parcels from foreclosure. a. The commissioner
17 of finance may, prior to final judgment, withdraw a parcel from a
18 proceeding under this chapter for any of the following reasons, (1) a
19 question which the commissioner deems meritorious has been raised as to
20 the validity of the tax liens affecting the parcel, (2) the city collec-
21 tor has accepted a payment of all taxes and interest which rendered the
22 parcel subject to foreclosure hereunder because the records in the
23 commissioner's office indicated that the principal amount of such taxes
24 was exceeded by the principal amount of subsequent taxes which would not
25 have rendered the parcel subject to foreclosure hereunder and which had
26 been paid prior to the commencement of said proceeding or (3) in cases
27 where the tax foreclosure action cannot be maintained such as, but not
28 limited thereto, where the charges which rendered a parcel subject to
29 foreclosure hereunder have been cancelled or were paid before the
30 commencement of the foreclosure proceeding but such payment was not
31 reported or did not clear for payment until after the commencement of
32 said proceeding, or where a name and address appearing on an owner's
33 registration card or an in rem card filed pursuant to section 11-416 or
34 11-417 of this chapter and contained in the files of the city collector
35 did not appear in the mailing list used by the commissioner of finance
36 for mailing notices of foreclosure in such proceeding.

37 b. To effectuate such withdrawal the commissioner of finance shall
38 deliver a certificate of withdrawal to the corporation counsel who shall
39 file it in the office of the county clerk in which the list of delin-
40 quent taxes was filed. The filing of such certificate with such county
41 clerk shall effect a discontinuance of the tax foreclosure action as to
42 the affected parcel, and the county clerk shall thereupon note such
43 withdrawal and discontinuance in the copy of the list of delinquent
44 taxes maintained by him or her adjacent to the county clerk's block
45 index of notices of pendency of action and shall cancel and discharge
46 any and all notations of the filing of said list of delinquent taxes as
47 to said parcel that may appear in any other books, records, indices and
48 dockets maintained in said clerk's office.

49 c. The commissioner of finance shall also deliver a duplicate original
50 certificate of withdrawal to the person entitled to such withdrawal.

51 d. The commissioner of finance shall recite the parcels so withdrawn
52 and the reasons for withdrawal in an affidavit of regularity to be
53 submitted by the commissioner in each action brought pursuant to this
54 chapter.

55 e. The commissioner of finance shall issue a certificate of withdrawal
56 whenever taxes and interest are paid, cancelled, liquidated or otherwise

1 lawfully disposed of as to any parcel which was previously severed
2 pursuant to section 11-409 of this chapter because an answer or liti-
3 gation was pending.

4 § 11-414 Right of redemption not diminished. The period of time in
5 which any owner of, or other person having an interest in a parcel of
6 property may redeem from a sale of a transfer of tax lien is not hereby
7 diminished nor shall such period of time be diminished by the commence-
8 ment of any action brought pursuant to this chapter.

9 § 11-415 Priority of liens. Tax liens shall rank in priority as may
10 now, or as may hereafter, be provided by law.

11 § 11-416 Owner's registration cards; mailing tax bills and notices to
12 registered owners or their designees. a. The commissioner of finance
13 shall maintain a file of owner's registration cards submitted by owners
14 of real property. Each such owner's registration card shall be signed by
15 the owner or a duly authorized representative and shall state the date
16 on which it was filed, the owner's full name and post office address and
17 a description of the premises by reference to the section, block, and
18 lot numbers on the tax map.

19 b. The commissioner of finance shall mail bills for taxes, charges and
20 assessments to all owners who have filed owner's registration cards as
21 herein provided, but the failure of the commissioner of finance so to
22 mail such bill shall not invalidate or otherwise affect the tax, charge
23 or assessment represented thereby nor prevent the accruing of any inter-
24 est or penalty imposed for the non-payment thereof, nor prevent or stay
25 proceedings under this chapter, nor effect the title of the plaintiff or
26 any purchaser under such proceedings.

27 c. The commissioner of finance shall also mail notice of foreclosure
28 and any other process required by this chapter to all owners who have
29 filed owner's registration cards whenever the parcels as to which such
30 cards were filed are included in a list of delinquent taxes filed pursu-
31 ant to this chapter. The failure to receive such notice or process as
32 herein provided shall not affect the validity of any action or proceed-
33 ing brought pursuant to this chapter.

34 d. An owner who files an owner's registration card may also designate
35 thereon the full name and post office address of a mortgagee, lienor or
36 other person to receive bills and notices. Where such designation is
37 made, the commissioner of finance shall not mail any bills and notices
38 to the owner but shall mail all bills and notices to the owner's desig-
39 nee.

40 § 11-417 In rem cards; mailing notices to other interested persons.

41 a. The commissioner of finance shall, in addition to the file maintained
42 by him or her pursuant to section 11-416 of this chapter, maintain a
43 file of in rem cards submitted by any person having an interest in real
44 property who is not entitled to have tax bills mailed to him or her by
45 the commissioner of finance, including mortgagees, lienors, encumbranc-
46 ers and owners who have filed owner's registration cards designating
47 someone else to receive bills and notices. Each such in rem card shall
48 be signed by the person filing such card or a duly authorized represen-
49 tative, shall contain a description of the premises by reference to the
50 section, block and lot numbers on the tax map and shall state the date
51 on which said card was filed, the full name and post office address of
52 the person filing said card and the nature of the interest said person
53 has in said premises.

54 b. The commissioner of finance shall mail a notice of foreclosure and
55 any other process required by this chapter to each person who has filed
56 an in rem card whenever the parcels to which such cards refer are

1 included in a list of delinquent taxes filed pursuant to this chapter.
2 However, failure to receive such notice or process shall not affect the
3 validity of any proceeding brought pursuant to this chapter.

4 § 11-418 Writ of assistance. The city, after acquiring title to prem-
5 ises under and pursuant to the terms and provisions of this chapter,
6 shall be entitled to a writ of assistance, with the same force and
7 effect as if the city had acquired the property by virtue of a mortgage
8 foreclosure.

9 § 11-419 Consolidation of actions. Actions or proceedings pending in
10 the courts, or otherwise, to cancel a sale of a tax lien on lands a lien
11 upon which is being foreclosed by action under this chapter, shall be
12 terminated upon the institution of a foreclosure action pursuant to this
13 chapter, and the rights and remedies of the parties in interest to such
14 pending actions or proceedings shall be determined by the court in such
15 foreclosure action.

16 § 11-420 Lands held for public use; right of sale. Whenever the city
17 shall become vested with the title to lands by virtue of a foreclosure
18 proceeding brought pursuant to the provisions of this chapter, such
19 lands shall, unless actually used for other than municipal purposes, be
20 deemed to be held by the city for a public use but for a period of not
21 more than three years from the date of the final judgment. The city is
22 hereby authorized to sell and convey such lands in the manner provided
23 by law for the sale and conveyance of other real property held and owned
24 by the city and not otherwise.

25 § 11-421 Certificate of sale as evidence. The transfer of tax lien or
26 any other written instrument representing a tax lien shall be presump-
27 tive evidence in all courts in all proceedings under this chapter by and
28 against the purchaser and his or her representatives, heirs and assigns,
29 of the truth of the statements therein, of the title of the purchaser to
30 the property therein described, and of the regularity and validity of
31 all proceedings had in reference to the taxes, assessments or other
32 legal charges for the nonpayment of which the tax lien was sold and the
33 sale thereof. After two years from the issuance of such certificate or
34 other written instrument, no evidence shall be admissible in any court
35 in a proceeding under this chapter to rebut such presumption unless the
36 holder thereof shall have procured such transfer of tax lien or such
37 other written instrument by fraud or had previous knowledge that it was
38 fraudulently made or procured.

39 § 11-422 Deed in lieu of foreclosure. The city may when authorized by
40 resolution of the successor agency, officer or employee of the former
41 board of estimate and in lieu of prosecuting an action to foreclose a
42 tax lien on any parcel pursuant to this chapter accept a conveyance of
43 the interest of any person having any right, title, interest, claim,
44 lien or equity of redemption in or to such parcel.

45 § 11-423 Sales and foreclosures of tax liens. Notwithstanding any of
46 the provisions of this chapter the city may continue to sell tax liens,
47 transfer the same to purchasers and become the purchaser at such sales
48 of tax liens in the manner provided by this title.

49 § 11-424 Application to the city for release of property acquired by
50 in rem tax foreclosure. a. (1) The city's interest in property acquired
51 by in rem tax foreclosure may be released pursuant to this section on
52 the application of any party who had an interest in said property as
53 either owner, mortgagee, lienor or encumbrancer at the time of the
54 city's acquisition thereof where such application is made at any time up
55 to two years from the date on which the deed by which the city acquired
56 title to said property was recorded.

1 (2) Notwithstanding any inconsistent provision of paragraph one of
2 this subdivision to the contrary, the city's interest in property
3 acquired by in rem tax foreclosure may be released pursuant to this
4 section upon application of any party who had an interest in said prop-
5 erty as either owner, mortgagee, lienor or encumbrancer at the time of
6 the city's acquisition thereof where such application is made more than
7 two years after the date on which the deed by which the city acquired
8 title to said property was recorded provided such application is author-
9 ized by the council as hereinafter provided. An application for such
10 release and the documents required by subdivision c of this section in
11 support thereof shall be filed with the department of citywide adminis-
12 trative services in the manner provided in subdivision b of this
13 section. The department of citywide administrative services shall give
14 the council written notice of the receipt of each such filing. After
15 review and approval of the application by the corporation counsel as to
16 form and eligibility of the applicant, the department of citywide admin-
17 istrative services shall send a copy of such application to the in rem
18 foreclosure release board and to the council. Upon receipt of such
19 application, the in rem foreclosure release board shall take no further
20 action on such application unless the council adopts a resolution within
21 one hundred twenty days following the first stated meeting of the coun-
22 cil after receipt of such application authorizing the board to consider
23 such application. If the council fails to adopt a resolution within such
24 one hundred twenty-day period, the council shall be deemed to have
25 denied its authorization for the board to consider such application. A
26 resolution of the council pursuant to this paragraph shall describe the
27 property for which release is sought by borough, tax map, block and lot
28 number and shall specify that release of the city's interest in such
29 property is subject to the approval of the in rem foreclosure release
30 board and to all the conditions and restrictions set forth in this
31 section.

32 b. 1. Any such application shall be made in writing to the commission-
33 er of citywide administrative services and shall be verified. It shall
34 contain the name and address of the applicant and shall state the date
35 on which and the in rem action by which the city acquired title to the
36 property sought to be released. It shall also contain a statement speci-
37 fying the nature of the applicant's interest in the property and a full
38 description of the instrument from which the applicant's interest
39 derives including the date of execution, the date and place of the
40 recording or entry of said instrument and the parties thereto. In the
41 event the applicant's interest arises by reason of the death of a prior
42 owner, mortgagee, lienor or encumbrancer, then the application shall
43 also state the applicant's relationship to said decedent and shall
44 include whatever additional information may be necessary to prove the
45 applicant's right to make such application.

46 2. A fee of two hundred seventy-five dollars shall be paid on the
47 submission of any such application which is subject to the provisions of
48 subdivision f of this section, except that the fee for any such applica-
49 tion for the release of property improved by a one or two-family dwell-
50 ing shall be one hundred dollars.

51 3. A fee of five hundred fifty dollars shall be paid on the submission
52 of any such application which is subject to the provisions of subdivi-
53 sion g of this section, except that the fee for any such application for
54 the release of property improved by a one or two-family dwelling shall
55 be one hundred dollars.

1 4. A fee of two hundred seventy-five dollars shall be paid on the
2 submission of any such application which is subject to the provisions of
3 subdivision h of this section within four months from the date on which
4 the deed by which the city acquired title to the subject property was
5 recorded, and a fee of five hundred and fifty dollars shall be paid on
6 the submission of any such application which is subject to the
7 provisions of such subdivision not within four months from such date;
8 except that the fee for any such application which is subject to the
9 provisions of such subdivision for the release of property improved by a
10 one or two-family dwelling shall be one hundred dollars.

11 5. The fees payable pursuant to paragraphs two, three and four of this
12 subdivision shall not be refundable.

13 6. In addition to the fees specified in paragraphs two, three and four
14 of this subdivision, there shall be paid on the submission of any appli-
15 cation which is subject to this section an amount at least equal to the
16 lesser of nine hundred dollars or the sum specified in paragraph one of
17 subdivision d of this section, which amount shall not be refundable, but
18 shall be applied in reduction of the sum specified in paragraph one of
19 subdivision d of this section; provided, however, that if a release
20 requires the authorization of the in rem foreclosure release board, and
21 such authorization is not given, such additional amount shall be
22 refunded to the applicant.

23 c. Each application shall be supported by the certified search of the
24 city register or by an official letter, certificate or certified search
25 of any title insurance or abstract company, organized and doing business
26 under the laws of this state. Such supporting instruments shall recite
27 the recording data both as to the deed by which the city acquired title
28 to the parcel sought to be released and the instrument from which the
29 applicant's interest derives. In the event the applicant's interest does
30 not appear of record but is derived by the death of an owner, mortgagee,
31 lienor or encumbrancer of record, then the application shall also be
32 supported by the affidavit of the applicant or other person having
33 information thereof, or by the duly written certificate or certification
34 of the county clerk or the clerk of any surrogate's or other court of
35 record, or by any other instrument or document required by the corpo-
36 ration counsel to substantiate the applicant's right to file such appli-
37 cation in compliance with the provisions of this section.

38 d. The city's interest shall be released only after payment, as to
39 each parcel to be released, of the following sums of money:

40 1. The principal amount due on all unpaid taxes, assessments, water
41 charges and sewer rents appearing on the list of delinquent taxes and
42 accruing thereafter together with interest at the rate or rates provided
43 by law.

44 2. Five percent of the amount paid pursuant to the preceding paragraph
45 but not exceeding one thousand dollars for each parcel.

46 3. Any deficiency which may result to the city after all payments made
47 by it for the repair, maintenance, and operation of the lands, real
48 estate or real property shall have been charged or debited in the appro-
49 priate accounts of the city and all rents, license fees and other moneys
50 collected by the city as a result of its operation of the said lands,
51 real estate or real property shall have been credited in such accounts.
52 Any contract for repair, maintenance, management or operation made by
53 the city on which it shall be liable, although payment thereon shall not
54 have been made, shall be deemed a charge or debit to such accounts as
55 though payment had been made. The amounts paid and collected by the city
56 as shown in its accounts and the necessity for making the several

1 payments and contracts to be charged as herein provided shall be conclu-
2 sive upon the applicant. Where a deficiency under this subdivision shall
3 be created or increased by the failure of the city to collect rents,
4 license fees or other moneys to which the city may have been entitled,
5 the right to collect or to bring action for the same shall be assigned,
6 transferred and set over to the applicant by an instrument in writing.

7 4. Any and all costs and disbursements which shall have been awarded
8 to the city or to which it may have become entitled by operation of law
9 or which it may have paid or become liable for payment in connection
10 with any litigation between it and the applicant or any person having an
11 estate or interest in the lands, real estate or real property to be
12 released resulting directly or indirectly from the foreclosure by action
13 in rem of the delinquent taxes affecting said lands, real estate or real
14 property.

15 5. A reasonable monthly fee to be determined by the city, through the
16 department of citywide administrative services, for management services
17 and operations of the lands, real estate or real property by the city
18 prior to the release of said lands, real estate or property.

19 6. The city, through the department of citywide administrative
20 services, shall also require as additional consideration for such
21 release, the payment of all arrears on mortgages held by the city and
22 all liens accruing to it by operation of law including but not limited
23 to relocation and emergency repair liens.

24 e. The corporation counsel shall effect the release of the city's
25 interest in property acquired by in rem tax foreclosure, as provided for
26 in this section, by preparing and causing to be entered an order discon-
27 tinuing the in rem tax foreclosure action as to said property, cancel-
28 ling the notice of pendency of such action as to said property and
29 vacating and setting aside the in rem judgment of foreclosure and the
30 deed executed and recorded pursuant to such judgment of foreclosure as
31 to said property. The entry of such order shall restore all parties,
32 including owners, mortgagees and any and all lienors, receivers and
33 administrators and encumbrancers, to the status they held at the time
34 the city acquired title to said property, as if the in rem tax foreclo-
35 sure had never taken place, and shall render said property liable for
36 all taxes, deficiencies, management fees and liens which shall accrue
37 subsequent to those paid in order to obtain the release provided for in
38 this section, or which were, for whatever reason, omitted from the
39 payment made to obtain said release.

40 f. If an application pursuant to this section, and the documents
41 required by subdivision c of this section in support thereof, are filed
42 within four months after the date of the city's acquisition of the
43 subject property, said application shall be granted providing the corpo-
44 ration counsel approves the application as to form, timeliness and
45 eligibility of the applicant and providing the applicant has paid all
46 amounts required to be paid by subdivision d of this section within
47 thirty days of the date on which a letter requesting applicant to make
48 such payment is mailed or delivered to the applicant. The city shall not
49 sell or assign any property acquired by in rem tax foreclosure within
50 four months of said acquisition but this provision shall not prevent the
51 city from authorizing condemnation of such property or vesting title
52 thereto in a condemnation proceeding during said four month period. In
53 the event an application pursuant to this section is filed within four
54 months of the city's acquisition by in rem tax foreclosure and title to
55 the subject property vests in condemnation before the city's interest
56 therein has been released by the vacate order provided for herein, the

1 applicant shall be entitled to the condemnation award for such property
2 without the entry of such vacate order, providing the corporation coun-
3 sel has approved the application as aforesaid and providing that the
4 amounts specified in subdivision d of this section, if not previously
5 paid, are deducted from said condemnation award, with taxes apportioned
6 to the date of the condemnation title vesting.

7 g. If an application for a release of the city's interest in property
8 acquired by in rem tax foreclosure, and the documents required by subdivi-
9 sion c of this section in support thereof, have been filed within the
10 time allowed in paragraph one of subdivision a of this section, but more
11 than four months after the date of the city's acquisition or if an
12 application for such release has been authorized by a resolution of the
13 council pursuant to paragraph two of subdivision a of this section and
14 such application and the documents required by subdivision c of this
15 section in support thereof have been filed, the in rem foreclosure
16 release board may, in its discretion, authorize the release of the
17 city's interest in said property pursuant to this section, provided that
18 the application has been approved by the corporation counsel as to form,
19 timeliness and eligibility of the applicant and provided that the city
20 has not sold or otherwise disposed of said property and provided,
21 further, that said property has not been condemned or assigned to any
22 agency of the city and is not the subject of contemplated use for any
23 capital or urban renewal project of the city. The corporation counsel
24 shall effect such discretionary release only where the applicant, after
25 the board's authorization of the release, has paid all the amounts
26 required to be paid by subdivision d of this section within thirty days
27 of the date on which a letter requesting the applicant to make such
28 payment is mailed or delivered to the applicant. The in rem foreclosure
29 release board may also, in its discretion, authorize a release of the
30 city's interest in such property, pursuant to the above provisions,
31 whenever an application for such release, approved as to form, timeli-
32 ness and eligibility by the corporation counsel, has been filed at any
33 time during the period allowed in subdivision a of this section in which
34 the applicant has requested an installment agreement of the commissioner
35 of citywide administrative services for the payment of the amounts
36 required to be paid by subdivision d of this section provided that said
37 commissioner has approved such request. The commissioner of citywide
38 administrative services shall not approve any such request unless the
39 applicant shall have given notice by certified mail to each tenant
40 located on the parcel, of the request and shall have given such commis-
41 sioner an affidavit stating that such notice has been provided, within
42 thirty days after the request. Any false statement in such affidavit
43 shall not in any way affect the validity of the agreement, be grounds
44 for its cancellation or in any way affect the release of the city's
45 interest in the parcel. Such agreement shall require, in addition to
46 full payment of the amounts due under paragraphs two, three, four, five
47 and six of subdivision d of this section, a first installment of fifty
48 percent of the amount due under paragraph one of said subdivision d with
49 the balance of said amount to be paid in four equal quarterly install-
50 ments together with all current taxes, assessments or other legal charg-
51 es that accrue during such period; provided, however, that: (i) whenever
52 a request for an installment agreement is made of the commissioner of
53 citywide administrative services by a company organized pursuant to
54 article eleven of the private housing finance law with the consent and
55 approval of the department of housing preservation and development or
56 for a parcel which is an owner-occupied residential building of not more

1 than five residential units, the commissioner of citywide administrative
2 services may, as to that portion of the amounts due under paragraph one
3 of subdivision d of this section which became due prior to the acquisi-
4 tion by the article eleven company of its interest in the property and
5 as to the amount due under paragraph one of subdivision d of this
6 section in the case of such an owner-occupied building, approve a
7 reduction of such first installment to an amount not less than ten
8 percent of the amount due under paragraph one of subdivision d of this
9 section and an increase in the number of the following equal quarterly
10 installments to a number which shall be equal to three times the number
11 of unpaid quarters of real estate taxes or the equivalent thereof but
12 which shall in no event exceed forty-eight, and (ii) notwithstanding
13 clause (i) of this paragraph, whenever an installment agreement is
14 requested on or after the date on which this clause takes effect with
15 respect to a parcel that, immediately prior to the city's acquisition
16 thereof by in rem tax foreclosure, was owned by a company organized
17 pursuant to article eleven of the state private housing finance law with
18 the consent and approval of the department of housing preservation and
19 development, or with respect to a parcel that is a residential building
20 containing not more than five residential units, a residential condomin-
21 ium unit or a residential building held in a cooperative form of owner-
22 ship, the commissioner of general services may, as to the amount due
23 under paragraph one of subdivision d of this section, approve an
24 installment agreement containing the terms relating to the required
25 percentage payment for the first installment and the required number of
26 subsequent quarterly installments, that would be applicable to such
27 parcel under paragraph two (but without regard to any reference therein
28 to paragraph three) of subdivision i of section 11-409 of this chapter.
29 For purposes of calculating the number of such following equal quarterly
30 installments, unpaid real estate taxes or the equivalent which are, on
31 and after July first, nineteen hundred eighty-two, due and payable on an
32 other than quarterly basis shall be deemed to be payable on a quarterly
33 basis. Where the in rem foreclosure release board denies an application
34 requesting an installment agreement the board shall authorize a release
35 of the city's interest, provided that the applicant thereafter pays all
36 the amounts required to be paid by subdivision d of this section within
37 thirty days of the date on which a letter requesting such payment is
38 mailed or delivered to the applicant only when said application and the
39 documents required by subdivision c of this section in support thereof
40 were filed within thirty days of the date of the city's acquisition of
41 the property sought to be released. Where the in rem foreclosure
42 release board denies an application requesting an installment agreement
43 which was filed more than thirty days after the date of the city's
44 acquisition, the board may, in its discretion, authorize a release of
45 the city's interest, provided that the applicant thereafter pays all the
46 amounts required to be paid by subdivision d of this section within
47 thirty days of the date on which a letter requesting such payment is
48 mailed or delivered to the applicant. Where the in rem foreclosure
49 release board approves an application requesting an installment agree-
50 ment, the order releasing the city's interest shall provide that in the
51 event of any default as to the payment of either quarterly installments
52 or current taxes, assessments or other legal charges during the term of
53 such agreement, as set forth in the board's resolution, all payments
54 made under said agreement shall be forfeited and the city shall be enti-
55 tled to reacquire the property so released. The corporation counsel
56 shall effect such reacquisition by causing to be entered as to such

1 property a supplemental judgment of foreclosure in the in rem action by
2 which said property was originally acquired immediately on notification
3 by the commissioner of finance of such default.

4 h. An owner of property entitled to an exemption under any of the
5 provisions of article four of the real property tax law during all or
6 part of the period covered by the tax items appearing on a list of
7 delinquent taxes may apply for a release of the city's interest in such
8 exempt property under the provisions of this section during the periods
9 of time set forth herein and for an additional period up to ten years
10 from the date of the city's acquisition of said property by in rem fore-
11 closure. The application of such owner shall contain, in addition to the
12 statements, searches and proofs required by this section, a statement
13 that an exemption under the real property tax law is being claimed. Such
14 application shall also state either that it is accompanied by the writ-
15 ten certificate of the comptroller setting forth the precise period
16 during which said property, while owned by such applicant, and during
17 the period after the city's acquisition up to the date of the certif-
18 icate if said property was still being used for an exempt purpose after
19 said acquisition, was entitled to an exemption and the exact nature and
20 extent of such exemption or that an application for such written certif-
21 icate has been filed with the comptroller. On issuing such written
22 certificate, the comptroller shall cancel those tax items which have
23 accrued during the period covered by the certificate to the extent the
24 applicant is entitled to an exemption as set forth in the certificate.
25 Where an application by an exempt owner is filed more than four months
26 after the date of the city's acquisition of the subject property, a
27 release of the city's interest may be issued only at the discretion of
28 the in rem foreclosure release board and subject to all the restrictions
29 set forth in subdivision g of this section. A release to an exempt
30 applicant shall be effected only after said applicant has paid all the
31 amounts required to be paid by subdivision d of this section, except for
32 those tax items which have been cancelled, in whole or in part, pursuant
33 to the comptroller's certificate, within thirty days of the date on
34 which a letter requesting payment is mailed or delivered to the appli-
35 cant.

36 i. The corporation counsel shall also effect the release of the city's
37 interest in property acquired by in rem foreclosure, as provided for in
38 this action, whenever the commissioner of finance shall accept as to any
39 parcel so acquired, the payment provided for in paragraph two of subdivi-
40 sion a of section 11-413 of this chapter. Said commissioner may accept
41 such payment at any time within four months of the date of the city's
42 acquisition and may further, subject to the approval of the in rem fore-
43 closure release board, accept such payment at any time more than four
44 months after the date of the city's acquisition but less than two years
45 from the date on which the city's deed was recorded providing said prop-
46 erty has not been sold or otherwise disposed of nor condemned or
47 assigned to any agency of the city and is not the subject of contem-
48 plated use of any capital or urban renewal project of the city.

49 § 11-424.1 In rem foreclosure release board. There shall be an in rem
50 foreclosure release board consisting of the mayor, the speaker of the
51 city council, the borough president, the corporation counsel and the
52 commissioner of finance. Members of the board may, by written authority
53 filed with the board and with the city clerk, appoint delegates to act
54 on their behalf as members of the board. The board shall have the power,
55 acting by resolution, to authorize the release of the city's interest in
56 property acquired by in rem tax foreclosure in accordance with sections

1 11-412.1 and 11-424 of the code based upon a determination, in its
2 discretion, that such release would be in the best interests of the
3 city. The board shall act after a meeting at which the public has been
4 provided an opportunity to comment on the proposed action. A resolution
5 of the board authorizing a release of the city's interest in any proper-
6 ty shall be adopted only upon the affirmative vote of not less than a
7 majority of all the members of the board. The board may consider any
8 information it deems relevant to a determination. The board shall not be
9 required to state the reasons for its determination.

10 § 11-425 Agreements for payment of delinquent taxes and charges in
11 installments. a. During the period beginning on May ninth, nineteen
12 hundred seventy-seven and ending on June thirtieth, nineteen hundred
13 seventy-seven, the commissioner of finance or, when so specified herein-
14 after, the commissioner of general services, shall be authorized and
15 empowered to make and execute agreements in the circumstances and
16 subject to the terms, conditions and limitations set forth in this
17 section; provided, however, that if the commissioner of finance or,
18 where applicable, the commissioner of general services determines in his
19 or her sole discretion that good cause exists, he or she may make and
20 execute such agreements during an additional period ending not later
21 than July thirty-first, nineteen hundred seventy-seven.

22 b. (1) Whenever it shall appear that a tax lien on a parcel has been
23 due and unpaid for a period of at least six months from the date on
24 which the tax, assessment or other legal charge represented thereby
25 became a lien, the commissioner of finance may enter into an agreement
26 with the owner of such parcel or other person claiming to have an inter-
27 est therein providing for the payment of such delinquent taxes, assess-
28 ments or other legal charges and interest and penalties in installments,
29 the first of which shall be equal to at least fifteen percent of such
30 arrears and shall be payable upon the execution of such agreement. Each
31 remaining installment shall be equal to at least an amount produced by
32 dividing the balance of such arrears by a factor determined by multiply-
33 ing the number of quarters of such arrears by two hundred percent;
34 provided, however, in no event shall such factor be in excess of thir-
35 ty-two. Each such remaining installment shall be payable quarterly on
36 the first of July, October, January and April.

37 (2) If an agreement authorized by paragraph one of this subdivision is
38 executed prior to the time the commissioner of finance files in the
39 office of the county clerk a list of delinquent taxes covering the city
40 or portion of the city in which the subject parcel is located, such
41 parcel shall be excluded from such list of delinquent taxes, provided,
42 at the time such list is filed, there is no default in the agreement and
43 all current taxes, assessments or other legal charges have been paid as
44 they became due or within the period of grace provided by law. In the
45 event of any default in the agreement or any failure to make timely
46 payment of any current item, the parcel shall, if then delinquent for
47 the applicable period specified in section 11-404 of this chapter, be
48 eligible for inclusion in any list of delinquent taxes thereafter filed.

49 (3) If an in rem foreclosure action has been commenced against any
50 parcel prior to May ninth, nineteen hundred seventy-seven, the commis-
51 sioner of finance may, notwithstanding the provisions of paragraph three
52 of subdivision a of section 11-413 of this chapter, enter into an agree-
53 ment authorized and described in the foregoing provisions of this
54 section with respect to such parcel. However, if such an agreement is
55 entered into subsequent to the last date for redemption specified in
56 subdivision a of section 11-407 of this chapter, there shall be paid to

1 the commissioner of finance at the time said agreement is executed an
2 amount equal to the penalty which would have been payable under subdivi-
3 sion c of section 11-407 of this chapter had the person executing the
4 agreement made a late redemption payment. Such amount shall be in addi-
5 tion to any installment payments required to be made under the agreement
6 and shall not be credited against any such installment payments. Any
7 parcel which is the subject of an agreement made pursuant to this para-
8 graph may, prior to final judgment, be withdrawn from the action,
9 provided there has been no default in the agreement, and provided
10 further that all current taxes, assessments or other legal charges are
11 paid when they become due or within the period of grace provided by law.
12 Such withdrawal shall be effected by the commissioner of finance in the
13 manner provided in section 11-413 of this chapter.

14 (4) Any person who, prior to May ninth, nineteen hundred seventy-sev-
15 en, has made, executed and filed with the commissioner of finance an
16 agreement pursuant to the provisions of paragraph three of subdivision a
17 of section 11-413 of this chapter, shall be permitted to make applica-
18 tion to the commissioner of finance for the purpose of having such
19 agreement cancelled and a new agreement executed as hereinabove
20 provided.

21 If an agreement executed prior to May ninth, nineteen hundred seven-
22 ty-seven is not cancelled as herein provided, any installments due and
23 payable under such agreement on or after July first, nineteen hundred
24 seventy-seven shall be subject to interest at the rate specified in
25 paragraph five of this subdivision, but only if, as of July first, nine-
26 teen hundred seventy-seven, there is no default in the agreement and all
27 current taxes, assessments or other legal charges have been paid within
28 the time allowed by law. Such rate of interest shall be calculated in
29 the manner and shall be subject to all the conditions provided in said
30 paragraph five.

31 (5) When an agreement has been entered into pursuant to this subdivi-
32 sion, the commissioner of finance shall, notwithstanding the rates of
33 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
34 charge, collect and receive interest on the arrears due and payable
35 under such agreement, to be calculated at the rate of seven percent per
36 annum from July first, nineteen hundred seventy-seven to the date of
37 payment of each installment. Any interest accrued or accruing prior to
38 July first, nineteen hundred seventy-seven shall not be affected by the
39 provisions of this paragraph, but shall be charged, collected and
40 received in the manner and at the rates specified in section 11-224,
41 11-312 or 11-313 of this title. The seven percent rate of interest spec-
42 ified in this paragraph shall be applicable only if (i) there is no
43 default in the agreement entered into as provided in this section, and
44 (ii) all current taxes, assessments or other legal charges are paid as
45 they become due or within the period of grace provided by law. In the
46 event of any default or failure to make timely payment of any current
47 item, the seven percent rate of interest specified in this paragraph
48 shall thereupon cease to be applicable and the commissioner of finance
49 shall thereafter charge, collect and receive interest in the manner and
50 at the rates otherwise specified in this title.

51 (6) In addition to the terms and conditions required by the preceding
52 paragraphs of this subdivision to be included in agreements authorized
53 by this section, the commissioner of finance may in his or her
54 discretion include in such agreements such additional terms and condi-
55 tions, not inconsistent with this section, as he or she determines to be
56 necessary in order to properly carry out the provisions of this section.

1 The commissioner may also adopt such rules and regulations as may be
2 necessary to carry out the provisions of this section.

3 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
4 ter, an application for the release of property acquired by the city
5 through in rem tax foreclosure is made within the four-month period
6 specified in subdivision f of section 11-424 of this chapter, and
7 provided such application is made during the period specified in subdivi-
8 sion a of this section, the provisions of this subdivision shall, at
9 the election of the applicant, apply with respect to such application
10 and the release sought thereby.

11 (2) At the time of filing the application for release, an applicant
12 who elects to have the provisions of this subdivision apply to him or
13 her, shall pay to the city the amounts specified in paragraphs two,
14 three and four of subdivision d of section 11-424 of this chapter, for
15 this purpose, the amount specified in paragraph two thereof shall be
16 deemed to be the amount which would have been required to be paid there-
17 under had this section not been in effect. Concurrent with the making of
18 such payment, the applicant shall enter into an agreement with the
19 commissioner of general services providing for the payment of all
20 current taxes, assessments or other legal charges on the property as
21 they become due or within the grace period provided by law, and, in
22 addition, providing for the payment of the amount specified in paragraph
23 one of subdivision d of section 11-424 of this chapter in installments,
24 the first of which shall be equal to at least twenty-five percent of
25 such amount and shall be payable upon the execution of such agreement.
26 The balance of such amount shall be payable in twelve equal quarterly
27 installments, each of which shall be paid quarterly on the first of
28 July, October, January and April.

29 (3) Pending approval by the corporation counsel of an application for
30 release as to form, timeliness and eligibility of the applicant, all
31 payments made pursuant to the preceding paragraph shall be held in
32 escrow; in the event the corporation counsel disapproves the applica-
33 tion, such payments shall be returned to the applicant, and the agree-
34 ment executed by the applicant shall thereupon be cancelled.

35 (4) In the case of any agreement made and executed pursuant to para-
36 graph two hereof, interest on any installment due and payable thereunder
37 shall, notwithstanding the rates of interest prescribed in section
38 11-224, 11-312 or 11-313 of this title, be charged, collected and
39 received at the rate of seven percent per annum from July first, nine-
40 teen hundred seventy-seven to the date of payment of each installment.
41 Any interest accrued or accruing prior to July first, nineteen hundred
42 seventy-seven shall not be affected by the provisions of this paragraph,
43 but shall be charged, collected and received in the manner and at the
44 rates specified in section 11-224, 11-312 or 11-313 of this title. The
45 seven percent rate of interest specified in this paragraph shall be
46 applicable only if (i) there is no default in the agreement entered into
47 as provided in this subdivision, and (ii) all current taxes, assessments
48 or other legal charges are paid as they become due or within the period
49 of grace provided by law.

50 (5) No release for which application has been made pursuant to this
51 subdivision shall be granted until the final payment under the agreement
52 herein provided is received by the city. Upon receipt of such final
53 payment by the city the corporation counsel shall effect the release in
54 the manner provided in section 11-424 of this chapter. In the event of
55 any default in an agreement executed as provided in this subdivision or
56 any failure to pay current taxes, assessments or other legal charges as

1 they become due or within the grace period provided by law, such agree-
2 ment shall thereupon become void, the release process shall be termi-
3 nated, and all payments theretofore made shall be forfeited to the city.

4 (6) In addition to the terms and conditions required by the preceding
5 paragraphs of this subdivision to be included in agreements authorized
6 thereby, the commissioner of general services may in his or her
7 discretion include in such agreements such additional terms and condi-
8 tions, not inconsistent with this subdivision, as the commissioner
9 determines to be necessary in order to properly carry out the provisions
10 hereof. The commissioner of general services may also adopt such rules
11 and regulations as may be necessary to carry out the provisions of this
12 subdivision.

13 § 11-426 Agreements for payment of delinquent taxes and charges in
14 installments. a. During the period beginning on December second, nine-
15 teen hundred seventy-seven and ending on March thirty-first, nineteen
16 hundred seventy-eight, the commissioner of finance, or, when so speci-
17 fied hereinafter, the commissioner of general services, shall be author-
18 ized and empowered to make and execute agreements in the circumstances
19 and subject to the terms, conditions and limitations set forth in this
20 section.

21 b. (1) Whenever it shall appear that a tax lien on a parcel has been
22 due and unpaid for a period of at least six months from the date on
23 which the tax, assessment or other legal charge represented thereby
24 became a lien, the commissioner of finance may enter into an agreement
25 with the owner of such parcel or other person claiming to have an inter-
26 est therein providing for the payment of such delinquent taxes, assess-
27 ments or other legal charges and interest and penalties in installments,
28 the first of which shall be equal to at least fifteen percent of such
29 arrears and shall be payable upon the execution of such agreement. Each
30 remaining installment shall be equal to at least an amount produced by
31 dividing the balance of such arrears by a factor determined by multiply-
32 ing the number of quarters of such arrears by two hundred percent. In no
33 event, however, shall the factor referred to in the preceding sentence
34 be in excess of thirty-two. Each such remaining installment shall be
35 payable quarterly on the first of July, October, January and April.

36 (2) If an agreement authorized by paragraph one of this subdivision is
37 executed prior to the time the commissioner of finance files in the
38 office of the county clerk a list of delinquent taxes covering the city
39 or portion of the city in which the subject parcel is located, such
40 parcel shall be excluded from such list of delinquent taxes, provided,
41 at the time such list is filed, there is no default in the agreement and
42 all current taxes, assessments or other legal charges have been paid as
43 they became due or within the period of grace provided by law. In the
44 event of any default in the agreement or any failure to make timely
45 payment of any current item, the parcel shall, if then delinquent for
46 the applicable period specified in section 11-404 of this chapter, be
47 eligible for inclusion in any list of delinquent taxes thereafter filed.

48 (3) If an in rem foreclosure action has been commenced against any
49 parcel prior to December second, nineteen hundred seventy-seven, the
50 commissioner of finance may, notwithstanding the provisions of paragraph
51 three of subdivision a of section 11-413 of this chapter, enter into an
52 agreement authorized and described in the foregoing provisions of this
53 section with respect to such parcel. However, if such an agreement is
54 entered into subsequent to the last date for redemption specified in
55 subdivision a of section 11-407 of this chapter, there shall be paid to
56 the commissioner of finance at the time said agreement is executed an

1 amount equal to the penalty which would have been payable under subdivi-
2 sion c of section 11-407 of this chapter had the person executing the
3 agreement made a late redemption payment. Such amount shall be in addi-
4 tion to any installment payments required to be made under the agreement
5 and shall not be credited against any such installment payments. Any
6 parcel which is the subject of an agreement made pursuant to this para-
7 graph may, prior to final judgment, be withdrawn from the action,
8 provided there has been no default in the agreement, and provided
9 further that all current taxes, assessments or other legal charges are
10 paid when they become due or within the period of grace provided by law.
11 Such withdrawal shall be effected by the commissioner of finance in the
12 manner provided in section 11-413 of this chapter.

13 (4) Any person who, prior to December second, nineteen hundred seven-
14 ty-seven, has made, executed and filed with the commissioner of finance
15 an agreement pursuant to the provisions of paragraph three of subdivi-
16 sion a of section 11-413 of this chapter, shall be permitted to make
17 application to the commissioner of finance for the purpose of having
18 such agreement cancelled and a new agreement executed as hereinabove
19 provided.

20 If an agreement executed prior to December second, nineteen hundred
21 seventy-seven is not cancelled as herein provided, any installments due
22 and payable under such agreement on or after April first, nineteen
23 hundred seventy-eight shall be subject to interest at the rate specified
24 in paragraph five of this subdivision, but only if, as of April first,
25 nineteen hundred seventy-eight, there is no default in the agreement and
26 all current taxes, assessments or other legal charges have been paid
27 within the time allowed by law. Such rate of interest shall be calcu-
28 lated in the manner and shall be subject to all the conditions provided
29 in said paragraph five.

30 (5) When an agreement has been entered into pursuant to this subdivi-
31 sion, the commissioner of finance shall, notwithstanding the rates of
32 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
33 charge, collect and receive interest on the arrears due and payable
34 under such agreement to be calculated at the rate of seven percent per
35 annum from April first, nineteen hundred seventy-eight to the date of
36 payment of each installment. Any interest accrued or accruing prior to
37 April first, nineteen hundred seventy-eight shall not be affected by the
38 provisions of this paragraph, but shall be charged, collected and
39 received in the manner and at the rates specified in section 11-224,
40 11-312 or 11-313 of this title. The seven percent rate of interest spec-
41 ified in this paragraph shall be applicable only if (i) there is no
42 default in the agreement entered into as provided in this section, and
43 (ii) all current taxes, assessments or other legal charges are paid as
44 they become due or within the period of grace provided by law. In the
45 event of any default or failure to make timely payment of any current
46 item, the seven percent rate of interest specified in this paragraph
47 shall thereupon cease to be applicable and the commissioner of finance
48 shall thereafter charge, collect and receive interest in the manner and
49 at the rates otherwise specified in this title.

50 (6) In addition to the terms and conditions required by this subdivi-
51 sion to be included in agreements authorized by this section, the
52 commissioner of finance may, in his or her discretion, include in such
53 agreements such additional terms and conditions, not inconsistent with
54 this section, as such commissioner determines to be necessary in order
55 to properly carry out the provisions of this section. The commissioner

1 of finance may also adopt such rules and regulations as may be necessary
2 to carry out the provisions of this section.

3 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
4 ter, an application for the release of property acquired by the city
5 through in rem tax foreclosure is made within the four-month period
6 specified in subdivision f of section 11-424 of this chapter, and
7 provided such application is made during the period specified in subdivi-
8 sion a of this section, the following provisions of this subdivision
9 shall, at the election of the applicant, apply with respect to such
10 application and the release sought thereby.

11 (2) At the time of filing the application for release, an applicant
12 who elects to have the provisions of this subdivision apply to him or
13 her, shall pay to the city the amounts specified in paragraphs two,
14 three and four of subdivision d of section 11-424 of this chapter, for
15 this purpose, the amount specified in such paragraph two shall be deemed
16 to be the amount which would have been required to be paid thereunder
17 had this section not been in effect. Concurrent with the making of such
18 payment, the applicant shall enter into an agreement with the commis-
19 sioner of general services providing for the payment of all current
20 taxes, assessments or other legal charges on the property as they become
21 due or within the grace period provided by law, and, in addition,
22 providing for the payment of the amount specified in paragraph one of
23 subdivision d of section 11-424 of this chapter in installments, the
24 first of which shall be equal to at least twenty-five percent of such
25 amount and shall be payable upon the execution of such agreement. The
26 balance of such amount shall be payable in twelve equal quarterly
27 installments, each of which shall be paid quarterly on the first of
28 July, October, January and April.

29 (3) Pending approval by the corporation counsel of an application for
30 release as to form, timeliness and eligibility of the applicant, all
31 payments made pursuant to the preceding paragraph shall be held in
32 escrow; in the event the corporation counsel disapproves the applica-
33 tion, such payments shall be returned to the applicant, and the agree-
34 ment executed by him or her shall thereupon be cancelled.

35 (4) In the case of any agreement made and executed pursuant to such
36 paragraph two, interest on any installment due and payable thereunder
37 shall, notwithstanding the rates of interest prescribed in section
38 11-224, 11-312 or 11-313 of this title, be charged, collected and
39 received at the rate of seven percent per annum from April first, nine-
40 teen hundred seventy-eight to the date of payment of each installment.
41 Any interest accrued or accruing prior to April first, nineteen hundred
42 seventy-eight shall not be affected by the provisions of this paragraph,
43 but shall be charged, collected and received in the manner and at the
44 rates specified in section 11-224, 11-312 or 11-313 of this title. The
45 seven percent rate of interest specified in this paragraph shall be
46 applicable only if (i) there is no default in the agreement entered into
47 as provided in this subdivision, and (ii) all current taxes, assessments
48 or other legal charges are paid as they become due or within the period
49 of grace provided by law.

50 (5) No release for which application has been made pursuant to this
51 subdivision shall be granted until the final payment under the agreement
52 herein provided is received by the city. Upon receipt of such final
53 payment by the city the corporation counsel shall effect the release in
54 the manner provided in section 11-424 of this chapter. In the event of
55 any default in an agreement executed as provided in this subdivision or
56 any failure to pay current taxes, assessments or other legal charges as

1 they become due or within the grace period provided by law, such agree-
2 ment shall thereupon become void, the release process shall be termi-
3 nated, and all payments theretofore made shall be forfeited to the city.

4 (6) In addition to the terms and conditions required by this subdivi-
5 sion to be included in agreements authorized thereby, the commissioner
6 of general services may, in his or her discretion, include in such
7 agreements such additional terms and conditions, not inconsistent with
8 this subdivision, as the commissioner determines to be necessary in
9 order to properly carry out the provisions hereof. The commissioner of
10 general services may also adopt such rules and regulations as may be
11 necessary to carry out the provisions of this subdivision.

12 § 11-427 Agreements for payment of delinquent taxes and charges in
13 installments. a. During the period beginning September first, nineteen
14 hundred seventy-eight and ending December thirty-first, nineteen hundred
15 seventy-eight, the commissioner of finance, or, when so specified here-
16 inafter, the commissioner of general services, shall be authorized and
17 empowered to make and execute agreements in the circumstances and
18 subject to the terms, conditions and limitations set forth in this
19 section; provided, however, that if the commissioner of finance or,
20 where applicable, the commissioner of general services, determines in
21 his or her sole discretion that good cause exists, he or she may make
22 and execute such agreements during an additional period ending not later
23 than January thirty-first, nineteen hundred seventy-nine.

24 b. (1) (i) Whenever it shall appear that a tax lien on a parcel has
25 been due and unpaid for a period of at least six months from the date on
26 which the tax, assessment or other legal charge represented thereby
27 became a lien, the commissioner of finance may enter into an agreement
28 with the owner of such parcel or other person claiming to have an inter-
29 est therein providing for the payment of such delinquent taxes, assess-
30 ments or other legal charges and interest and penalties in installments,
31 the first of which shall be equal to at least fifteen percent of such
32 arrears and shall be payable upon the execution of such agreement. Each
33 remaining installment shall be equal to at least an amount produced by
34 dividing the balance of such arrears by a factor determined by multiply-
35 ing the number of quarters of such arrears by two.

36 (ii) In no event, however, shall the factor referred to in subpara-
37 graph (i) of this paragraph be in excess of thirty-two. Each such
38 remaining installment shall be payable quarterly on the first of July,
39 October, January and April.

40 (2) If an agreement authorized by paragraph one of this subdivision is
41 executed prior to the time the commissioner of finance files in the
42 office of the county clerk a list of delinquent taxes covering the city
43 or portion of the city in which the subject parcel is located, such
44 parcel shall be excluded from such list of delinquent taxes, provided,
45 at the time such list is filed, there is no default in the agreement and
46 all current taxes, assessments or other legal charges were paid as they
47 became due or within the period of grace provided by law. In the event
48 of any default in the agreement or any failure to make timely payment of
49 any current item, the parcel shall, if then delinquent for the applica-
50 ble period specified in section 11-404 of this chapter, be eligible for
51 inclusion in any list of delinquent taxes thereafter filed.

52 (3) If an in rem foreclosure action has been commenced against any
53 parcel prior to September first, nineteen hundred seventy-eight, the
54 commissioner of finance may, notwithstanding the provisions of paragraph
55 three of subdivision a of section 11-413 of this chapter, enter into an
56 agreement authorized and described in the foregoing provisions of this

1 section with respect to such parcel. However, if such an agreement is
2 entered into subsequent to the last date for redemption specified in
3 subdivision a of section 11-407 of this chapter, there shall be paid to
4 the commissioner of finance at the time said agreement is executed an
5 amount equal to the penalty which would have been payable under subdivi-
6 sion c of section 11-407 of this chapter had the person executing the
7 agreement made a late redemption payment. Such amount shall be in addi-
8 tion to any installment payments required to be made under the agreement
9 and shall not be credited against any such installment payments. Any
10 parcel which is the subject of an agreement made pursuant to this para-
11 graph may, prior to final judgment, be withdrawn from the action,
12 provided there has been no default in the agreement, and provided
13 further that all current taxes, assessments or other legal charges are
14 paid when they become due or within the period of grace provided by law.
15 Such withdrawal shall be effected by the commissioner of finance in the
16 manner provided in section 11-413 of this chapter.

17 (4) Any person who, prior to September first, nineteen hundred seven-
18 ty-eight, has made, executed and filed with the commissioner of finance
19 an agreement pursuant to the provisions of paragraph three of subdivi-
20 sion a of section 11-413 of this chapter, shall be permitted to make
21 application to the commissioner of finance for the purpose of having
22 such agreement cancelled and a new agreement executed as hereinabove
23 provided.

24 If an agreement executed prior to September first, nineteen hundred
25 seventy-eight is not cancelled as herein provided, any installments due
26 and payable under such agreement on or after February first, nineteen
27 hundred seventy-nine shall be subject to interest at the rate specified
28 in paragraph six of this subdivision, but only if, as of February first,
29 nineteen hundred seventy-nine, there is no default in the agreement and
30 all current taxes, assessments or other legal charges have been paid
31 within the time allowed by law. Such rate of interest shall be calcu-
32 lated in the manner and shall be subject to all the conditions provided
33 in paragraph six of this subdivision.

34 (5) Notwithstanding the preceding paragraphs of this subdivision, no
35 owner of, or other person claiming to have an interest in, any parcel
36 shall be eligible to enter into an agreement authorized by such para-
37 graphs where such parcel was included in an in rem foreclosure action
38 but was severed therefrom pursuant to the judgment of foreclosure in
39 such action because an answer was still pending as to such parcel. The
40 commissioner of finance may, however, on notice to the corporation coun-
41 sel, enter into an agreement with such owner or other interested person
42 providing for the payment of all current taxes, assessments or other
43 legal charges on the parcel as they become due or within the grace peri-
44 od provided by law, and, in addition, providing for payment of the
45 amount of all delinquent taxes, assessments or other legal charges and
46 interest due as of the date the agreement is executed in installments,
47 the first of which shall be equal to at least twenty-five percent of
48 such amount and shall be payable upon the execution of such agreement,
49 and the balance of which shall be payable in twelve equal quarterly
50 installments, each of which shall be paid on the first of July, October,
51 January and April. In addition, there shall be paid to the commissioner
52 of finance at the time such agreement is executed a penalty equal to
53 five percent of the amount of the delinquent taxes, assessments or other
54 legal charges and interest due as of the date of the agreement, which
55 penalty shall not exceed five hundred dollars. Any installments due and
56 payable on or after February first, nineteen hundred seventy-nine under

1 an agreement described in this paragraph shall be subject to interest at
2 the rate specified in paragraph six of this subdivision, but only if, as
3 of February first, nineteen hundred seventy-nine, there is no default in
4 the agreement and all current taxes, assessments or other legal charges
5 have been paid within the time allowed by law. Such rate of interest
6 shall be calculated in the manner and shall be subject to all the condi-
7 tions provided in paragraph six of this subdivision.

8 Upon receipt of the final payment due under an agreement executed
9 pursuant to this paragraph, the commissioner of finance shall discontin-
10 ue the in rem action pending with respect to the parcel which is the
11 subject of such agreement, and shall cancel the lis pendens pertaining
12 thereto by issuing a certificate of withdrawal pursuant to section
13 11-413 of this chapter. In the event of any default in such agreement or
14 any failure to pay current taxes, assessments or other legal charges as
15 they become due or within the grace period provided by law, such agree-
16 ment and the answer which was the basis for the severance of the subject
17 parcel from the in rem action shall both be deemed null and void and the
18 city shall be entitled to acquire title to such parcel by entry of an
19 appropriate supplemental judgment of foreclosure in such in rem action
20 without further notice to the answering party.

21 (6) When an agreement has been entered into pursuant to this subdivi-
22 sion, the commissioner of finance shall, notwithstanding the rates of
23 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
24 charge, collect and receive interest on the arrears due and payable
25 under such agreement, to be calculated at the rate of seven percent per
26 annum from February first, nineteen hundred seventy-nine to the date of
27 payment of each installment. Any interest accrued or accruing prior to
28 February first, nineteen hundred seventy-nine shall not be affected by
29 the provisions of this paragraph, but shall be charged, collected and
30 received in the manner and at the rates specified in section 11-224,
31 11-312 or 11-313 of this title. The seven percent rate of interest spec-
32 ified in this paragraph shall be applicable only if (i) there is no
33 default in the agreement entered into as provided in this section, and
34 (ii) all current taxes, assessments or other legal charges are paid as
35 they become due or within the period of grace provided by law. In the
36 event of any default or failure to make timely payment of any current
37 item, the seven percent rate of interest specified in this paragraph
38 shall thereupon cease to be applicable and the commissioner of finance
39 shall thereafter charge, collect and receive interest in the manner and
40 at the rates otherwise specified in this chapter.

41 (7) In addition to the terms and conditions required by this subdivi-
42 sion to be included in agreements authorized by this section, the
43 commissioner of finance may, in his or her discretion, include in such
44 agreements such additional terms and conditions, not inconsistent with
45 this section, as the commissioner determines to be necessary in order to
46 properly carry out the provisions of this section. The commissioner may
47 also adopt such rules and regulations as may be necessary to carry out
48 the provisions of this section.

49 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
50 ter, an application for the release of property acquired by the city
51 through in rem tax foreclosure has been filed within the four-month
52 period specified in subdivision f of such section, and the sixty-day
53 period for payment referred to in such subdivision has not expired prior
54 to the commencement of the period specified in subdivision a of this
55 section, the provisions of this subdivision shall, at the election of
56 the applicant, apply with respect to such application and the release

1 sought thereby, provided notice of such election is given to the commis-
2 sioner of general services during the period specified in subdivision a
3 of this section, but in no event later than the last day of the sixty-
4 day period referred to in subdivision f of section 11-424 of this chap-
5 ter.

6 (2) An applicant who elects to have the provisions of this subdivision
7 apply to him or her, shall, at the time such applicant notifies the
8 commissioner of general services of his or her election, pay to the city
9 the amounts specified in paragraphs two, three and four of subdivision d
10 of section 11-424 of this chapter; for this purpose, the amount speci-
11 fied in paragraph two thereof shall be deemed to be the amount which
12 would have been required to be paid thereunder had this section not been
13 in effect. Concurrent with the making of such payment, the applicant
14 shall enter into an agreement with the commissioner of general services
15 providing for the payment of all current taxes, assessments or other
16 legal charges on the property as they become due or within the grace
17 period provided by law, and, in addition, providing for the payment of
18 the amount specified in paragraph one of subdivision d of section 11-424
19 of this chapter in installments, the first of which shall be equal to at
20 least twenty-five percent of such amount and shall be payable upon the
21 execution of such agreement. The balance of such amount shall be payable
22 in twelve equal quarterly installments, each of which shall be paid
23 quarterly on the first of July, October, January and April.

24 (3) Pending approval by the corporation counsel of an application for
25 release as to form, timeliness and eligibility of the applicant, all
26 payments made pursuant to paragraph three of this subdivision shall be
27 held in escrow; in the event the corporation counsel disapproves the
28 application, such payments shall be returned to the applicant, and the
29 agreement executed by him or her shall thereupon be cancelled.

30 (4) In the case of any agreement made and executed pursuant to para-
31 graph two of this subdivision, interest on any installment due and paya-
32 ble thereunder shall, notwithstanding the rates of interest prescribed
33 in section 11-224, 11-312 or 11-313 of this title, be charged, collected
34 and received at the rate of seven percent per annum from February first,
35 nineteen hundred seventy-nine to the date of payment of each install-
36 ment. Any interest accrued or accruing prior to February first, nineteen
37 hundred seventy-nine shall not be affected by the provisions of this
38 paragraph, but shall be charged, collected and received in the manner
39 and at the rates specified in section 11-224, 11-312 or 11-313 of this
40 title. The seven percent rate of interest specified in this paragraph
41 shall be applicable only if (i) there is no default in the agreement
42 entered into as provided in this subdivision, and (ii) all current
43 taxes, assessments or other legal charges are paid as they become due or
44 within the period of grace provided by law.

45 (5) No release for which application has been made pursuant to subdi-
46 vision f of section 11-424 of this chapter shall be granted until the
47 final payment under the agreement herein provided is received by the
48 city. Upon receipt of such final payment by the city the corporation
49 counsel shall effect the release in the manner provided in section
50 11-424 of this chapter. In the event of any default in an agreement
51 executed as provided in this subdivision or any failure to pay current
52 taxes, assessments or other legal charges as they become due or within
53 the grace period provided by law, such agreement shall thereupon become
54 void, the release process shall be terminated and all payments thereto-
55 fore made shall be forfeited to the city.

1 (6) In addition to the terms and conditions required by this subdivi-
2 sion to be included in agreements authorized thereby, the commissioner
3 of general services may, in his or her discretion, include in such
4 agreements such additional terms and conditions, not inconsistent with
5 this subdivision, as the commissioner determines to be necessary in
6 order to properly carry out the provisions hereof. The commissioner of
7 general services may also adopt such rules and regulations as may be
8 necessary to carry out the provisions of this subdivision.

9 § 11-428 Disposition of proceeds of sales of properties acquired by
10 city through tax enforcement foreclosure proceedings. The proceeds of
11 the sale of real property acquired through tax enforcement foreclosure
12 proceedings, or by deed in lieu thereof, including subsequent receipts
13 in diminution of purchase money mortgages accepted at the time of sale,
14 shall be applied as follows:

15 a. The amount of the unpaid real estate taxes accrued against such
16 property from the first of January or the first of July, whichever first
17 immediately precedes the date on which title vested in the city to the
18 date of conveyance of title by the city, without interest or penalties
19 thereon, shall be credited to the tax deficiency account.

20 b. The balance, if any, remaining after deduction of the amount speci-
21 fied in paragraph a hereof, shall be paid into the funds hereinafter
22 specified in the following order:

23 1. A sum equal to the amount of the unpaid assessments for local
24 improvements accrued against such property at the date of commencement
25 of the foreclosure proceeding and up to the date of conveyance of title
26 by the city, without interest or penalties thereon, shall be paid into
27 the appropriate assessment funds.

28 2. A sum equal to the amount of unpaid sewer rents, including interest
29 and penalties thereon, accrued against such property at the date of
30 commencement of the foreclosure proceedings and up to the date of
31 conveyance of title by the city shall be paid into the sewer fund.

32 3. The amount of the brokerage fee and other expenses expended by the
33 city in connection with such sale shall be paid into the fund or code to
34 which such fee was charged.

35 4. The balance of such proceeds, if any, and the interest on any
36 purchase money mortgage accepted by the city at the time of such sale
37 shall be paid into the general fund. In the event that any part of such
38 balance is represented by bonds and mortgages, such bonds and mortgages
39 may be deposited in the tax appropriation and general fund stabilization
40 reserve fund and a sum equal to the amount of the cash represented by
41 such bonds and mortgages shall in such event be transferred from the tax
42 appropriation and general fund stabilization reserve fund to the general
43 fund.

44 CHAPTER 5

45 CITY UNINCORPORATED BUSINESS INCOME TAX

46 § 11-501 Meaning of terms. (a) General. Unless a different meaning is
47 clearly required, any term used in this chapter shall have the same
48 meaning as when used in a comparable context in the laws of the United
49 States relating to federal income taxes, and any reference in this chap-
50 ter to the laws of the United States shall mean the provisions of the
51 internal revenue code of nineteen hundred fifty-four, and amendments
52 thereto, and other provisions of the laws of the United States relating
53 to federal income taxes, as the same are included in this chapter as an
54 appendix or as included by reference to an appendix of another chapter

1 enacted by the same law as enacts this chapter. (The quotation of the
2 aforesaid laws of the United States is intended to make them a part of
3 this chapter and to avoid constitutional uncertainties which might
4 result if such laws were merely incorporated by reference. The quotation
5 of a provision of the federal internal revenue code or of any other law
6 of the United States shall not necessarily mean that it is applicable to
7 or has relevance to this chapter.)

8 (b) "State", "this state" or "the state" when used in this chapter
9 shall mean the state of New York.

10 (c) "Local income taxes", when used in this chapter shall mean an
11 income tax imposed by a political subdivision of a state.

12 (d) "Commissioner of finance" when used in this chapter shall mean the
13 commissioner of finance of the city.

14 (e) "Department of finance" when used in this chapter shall mean the
15 department of finance of the city.

16 (f) "Tax appeals tribunal" when used in this chapter shall mean the
17 tax appeals tribunal established by section one hundred sixty-eight of
18 the charter of the preceding municipality as it existed January first,
19 two thousand nine.

20 (g) "Unincorporated business entire net income" when used in this
21 chapter shall mean the excess of the unincorporated business gross
22 income of an unincorporated business over its unincorporated business
23 deductions.

24 (h) "Investment capital" when used in this chapter shall mean invest-
25 ments of the unincorporated business in stocks, bonds and other securi-
26 ties, corporate and governmental (excluding governmental stocks, bonds
27 and other securities the interest or dividends from which are fully
28 exempt from tax under this chapter, other than any such governmental
29 stock, bond or other security which is sold or otherwise disposed of
30 during the taxable year in a transaction which results in a gain or loss
31 which is included in computing unincorporated business entire net income
32 for the taxable year), not held for sale to customers in the regular
33 course of business, provided, however, that in the discretion of the
34 commissioner of finance, there shall be deducted from investment capital
35 any liabilities of the unincorporated business which are directly or
36 indirectly attributable to investment capital.

37 (i) "Investment income" when used in this chapter shall mean income,
38 gains and losses from investment capital, to the extent included in
39 computing unincorporated business entire net income, less, in the
40 discretion of the commissioner of finance, any deductions allowable in
41 computing unincorporated business entire net income which are directly
42 or indirectly attributable to investment capital or investment income,
43 provided, however, that in no case shall investment income exceed unin-
44 corporated business entire net income.

45 (j) "Business capital" when used in this chapter shall mean all assets
46 of the unincorporated business other than investment capital, less
47 liabilities of the unincorporated business not deducted from investment
48 capital, except that cash on hand and on deposit shall be treated as
49 investment capital or as business capital as the taxpayer may elect.

50 (k) "Business income" when used in this chapter shall mean unincorpo-
51 rated business entire net income minus investment income.

52 (l) "Dealer" when used in this chapter shall mean an individual or
53 unincorporated entity that (A) holds or disposes of property that is
54 stock in trade of the taxpayer, inventory or is otherwise held for sale
55 to customers in the ordinary course of the taxpayer's trade or business,
56 or (B) regularly offers to enter into, assume, offset, assign or other-

1 wise terminate positions in property with customers in the ordinary
2 course of the taxpayer's trade or business, provided, however, an indi-
3 vidual or unincorporated entity shall not be treated as a dealer based
4 solely on such individual's or entity's ownership of an interest in an
5 entity that is a dealer, and provided, further, that an unincorporated
6 entity shall not be treated as a dealer based solely on the ownership by
7 a dealer of an interest in that unincorporated entity.

8 (m) "Unincorporated entity" when used in this chapter shall include an
9 entity classified as a partnership for federal income tax purposes
10 regardless of whether the entity is formed as a corporation, joint-stock
11 company, joint-stock association, body corporate or body politic or
12 whether the entity is organized under a federal or state statute, or
13 under a statute of a federally recognized Indian tribe, or under a stat-
14 ute of a country other than the United States that describes or refers
15 to the entity as incorporated.

16 § 11-502 Unincorporated business defined. (a) General. An unincorpo-
17 rated business means any trade, business, profession or occupation
18 conducted, engaged in or being liquidated by an individual or unincorpo-
19 rated entity, including a partnership, a fiduciary, a corporation in
20 liquidation or an unincorporated entity that has made the election
21 permitted under paragraph (b) of subdivision one of section 11-602 of
22 this title (but only for the period during which such election is in
23 effect), but not including any entity subject to tax under chapter six
24 of this title and not including any entity doing an insurance business
25 as a member of the New York insurance exchange described in paragraph
26 one of subsection (b) of section six thousand two hundred one of the
27 insurance law. Unincorporated businesses subject to tax under a local
28 law of the city imposing a tax on utilities shall not be subject to tax
29 under this chapter; provided, however, that unincorporated businesses,
30 other than (1) utility businesses subject to the supervision of the
31 state department of public service and (2) for taxable years beginning
32 on or after August first, two thousand two, utilities as defined in
33 subdivision six of section 11-1101 of this title, which are subject to
34 tax under a local law of the city imposing a tax on vendors of utility
35 services shall be subject to tax under this chapter on that percentage
36 of their entire net income allocable to the city under section 11-508 of
37 this chapter which their receipts other than those taxable under such
38 local law taxing vendors of utility services is of their total receipts.
39 If an individual or an unincorporated entity carries on wholly or partly
40 in the city two or more unincorporated businesses, all such businesses
41 shall be treated as one unincorporated business for the purposes of this
42 chapter. For purposes of this chapter, an unincorporated entity shall be
43 treated as carrying on any trade, business, profession or occupation
44 carried on in whole or in part in the city by any other unincorporated
45 entity in which the first unincorporated entity owns an interest, and
46 the ownership by an unincorporated entity of an interest in another
47 unincorporated entity that is not carrying on any trade, business,
48 profession, or occupation in whole or in part in the city shall not be
49 deemed the conduct of an unincorporated business by the first unincorpo-
50 rated entity. Notwithstanding anything to the contrary in the preceding
51 sentence, for taxable years beginning on or after August first, two
52 thousand two, an unincorporated business that is a partner in a partner-
53 ship subject to tax under a local law of the city imposing a tax on
54 utilities, as defined in subdivision six of section 11-1101 of this
55 title, shall not be considered to be carrying on the trade, business,
56 profession or occupation carried on by such partnership.

1 (b) Services as employee. The performance of services by an individual
2 as an employee or as an officer or director of a corporation, society,
3 association, or political entity, or as a fiduciary, shall not be deemed
4 an unincorporated business, unless such services constitute part of a
5 business regularly carried on by such individual.

6 (c) Purchase and sale for own account. (1) Definitions. (A) Property.
7 For purposes of this subdivision, property shall mean real and personal
8 property, including but not limited to, property qualifying as invest-
9 ment capital within the meaning of subdivision (h) of section 11-501 of
10 this chapter, other stocks, notes, bonds, debentures, or other evidences
11 of indebtedness, interest rate, currency, or equity notional principal
12 contracts, foreign currencies, interests in, or derivative financial
13 instruments (including options, forward or futures contracts, short
14 positions, and similar financial instruments) in any property described
15 above, and any commodity traded on or subject to the rules of a board of
16 trade or commodity exchange, provided, however, property shall not
17 include: (i) debt instruments issued by the taxpayer; (ii) accounts
18 receivable held by a factor; (iii) property held as stock in trade,
19 inventory or otherwise held for sale to customers in the ordinary course
20 of the taxpayer's trade or business; (iv) debt instruments acquired in
21 the ordinary course of the taxpayer's trade or business for funds
22 loaned, services rendered or for the sale, rental or other transfer of
23 property by the taxpayer; (v) interests in unincorporated entities; or
24 (vi) positions in property described above entered into, assumed,
25 offset, assigned or terminated by a dealer with respect to such posi-
26 tions in property.

27 (B) Investor. For purposes of this subdivision, a taxpayer shall be
28 treated as acquiring, holding or disposing of an interest in an unincor-
29 porated entity as an investor if: (i) the unincorporated entity meets
30 the requirements of subparagraph (B) of paragraph four of this subdivi-
31 sion and the taxpayer does not receive a distributive share of such
32 entity's income, gain, loss, deduction, credit and basis from a business
33 carried on in whole or in part in the city that is materially greater
34 than its distributive share of any other item of income, gain, loss
35 deduction, credit or basis of such entity; or (ii) with respect to any
36 other unincorporated entity, the taxpayer is neither a general partner
37 nor authorized under the entity's governing instrument to manage or
38 participate in, nor managing, nor participating in, the day-to-day busi-
39 ness of the unincorporated entity.

40 (2) An individual or other unincorporated entity, except a dealer as
41 defined in subdivision (1) of section 11-501 of this chapter, shall not
42 be deemed engaged in an unincorporated business solely by reason of (A)
43 the purchase, holding and sale for his, her or its own account of prop-
44 erty, as defined in paragraph one of this subdivision, or the entry
45 into, assumption, offset, assignment, or other termination of a position
46 in any property so defined, or both, (B) the acquisition, holding or
47 disposition, other than in the ordinary course of a trade or business,
48 of interests in unincorporated entities engaged solely in activities
49 described in subparagraph (A), (B) or (C) of this paragraph, or (C) any
50 combination of the activities described in subparagraphs (A) and (B) of
51 this paragraph and any other activity not otherwise constituting the
52 conduct of an unincorporated business subject to the tax imposed by this
53 chapter, but this paragraph shall not apply if the unincorporated entity
54 is taxable as a corporation for federal income tax purposes.

55 (3) Notwithstanding anything to the contrary, the receipt by an indi-
56 vidual or other unincorporated entity of twenty-five thousand dollars or

1 less of gross receipts during the taxable year (determined without
2 regard to any deductions) from an unincorporated business wholly or
3 partly carried on within the city by such individual or unincorporated
4 entity shall not cause such individual or other unincorporated entity to
5 be treated as not engaged solely in the activities described in subpara-
6 graph (A), (B) or (C) of paragraph two of this subdivision.

7 (4) (A) If a taxpayer that is an unincorporated entity is primarily
8 engaged in (i) activities described in subparagraph (A), (B) or (C) of
9 paragraph two of this subdivision, or (ii) the acquisition, holding or
10 disposition, other than in the ordinary course of a trade or business,
11 of interests as an investor in unincorporated entities carrying on any
12 unincorporated business in whole or in part in the city, or both, the
13 activities described in subparagraph (A), (B), or (C) of paragraph two
14 of this subdivision carried on by the taxpayer or by any unincorporated
15 entity primarily engaged in the activities described in clause (i) or
16 (ii) of this subparagraph in which the taxpayer owns an interest shall
17 not be deemed an unincorporated business carried on by the taxpayer.

18 (B) For purposes of subparagraph (A) of this paragraph, an unincorpo-
19 rated entity will be treated as primarily engaged in activities
20 described in clause (i) or (ii) of subparagraph (A) of this paragraph,
21 or both, if at least ninety percent of the value of its total assets is
22 represented by assets described in subparagraph (C) of this paragraph.

23 (C) For purposes of subparagraph (B) of this paragraph, assets
24 described in this subparagraph include:

25 (i) property as defined in paragraph one of this subdivision;
26 (ii) interests in unincorporated entities not carrying on any unincor-
27 porated business in whole or in part in the city; and
28 (iii) interests in unincorporated entities carrying on an unincorpo-
29 rated business in whole or in part in the city held by the taxpayer as
30 an investor, as defined in paragraph one of this subdivision.

31 (D) For purposes of determining whether a taxpayer meets the require-
32 ments of subparagraph (B) of this paragraph, the value of assets
33 described in subparagraph (C) of this paragraph shall be the average
34 monthly gross value of the assets of the taxpayer. For purposes of this
35 paragraph, the value of assets of the taxpayer that consist of real
36 property or marketable securities shall be the fair market value thereof
37 and the value of assets other than real property or marketable securi-
38 ties shall be the value thereof shown on the books and records of the
39 taxpayer in accordance with generally accepted accounting principles. In
40 case it shall appear to the commissioner of finance that the use of
41 gross value in determining whether the requirements of subparagraph (B)
42 of this paragraph are met, improperly or inaccurately reflects the
43 taxpayer's primary activities, the commissioner of finance is authorized
44 in his or her discretion and in such manner as he or she may determine,
45 to reduce the gross value of the taxpayer's assets by liabilities
46 attributable thereto or to eliminate assets, so as to properly and accu-
47 rately reflect the taxpayer's primary activities.

48 (d) Holding, leasing or managing real property. An owner of real prop-
49 erty, a lessee or a fiduciary shall not be deemed engaged in an unincor-
50 porated business solely by reason of holding, leasing or managing real
51 property. If an owner of real property or lessee or fiduciary (except a
52 dealer holding real property primarily for sale to customers in the
53 ordinary course of his or her trade or business) who is holding, leasing
54 or managing real property is also carrying on an unincorporated business
55 in whole or in part in the city, whether or not such unincorporated
56 business is carried on at or is connected with such real property, such

1 holding, leasing or managing of real property shall not be deemed an
2 unincorporated business if, and only to the extent that, such real prop-
3 erty is held, leased or managed for the purpose of producing rental
4 income from such real property or gain upon the sale or other disposi-
5 tion of such real property. For purposes of this subdivision, the
6 conduct by such owner, lessee or fiduciary, at such real property, of a
7 trade, business, profession or occupation, including, but not limited
8 to, a garage, restaurant, laundry or health club, shall be deemed to be
9 an incident to the holding, leasing or managing of such real property,
10 and shall not be deemed the conduct of an unincorporated business, if
11 such trade, business, profession or occupation is conducted solely for
12 the benefit of tenants at such real property, as an incidental service
13 to such tenants, and is not open or available to the general public,
14 provided, however, if any such owner, lessee or fiduciary operates a
15 garage, parking lot or other similar facility at such real property that
16 is open or available to the general public, the provision by any such
17 owner, lessee or fiduciary of the service of parking, garaging or stor-
18 ing of motor vehicles on a monthly or longer term basis shall be deemed
19 to be an incident to the holding, leasing or managing of such real prop-
20 erty, and shall not be deemed the conduct of an unincorporated business
21 if, and only to the extent that, such monthly or longer term parking,
22 garaging or storing service is provided to tenants at such real property
23 as an incidental service to such tenants. If an owner, lessee or fiduci-
24 ary holding, leasing or managing real property operates at such real
25 property a garage, parking lot or other similar facility that is open or
26 available to the public, each such owner, lessee or fiduciary shall
27 file, together with and as a part of the returns required under section
28 11-514 of this chapter, a report or schedule for each such garage, park-
29 ing lot or other similar facility, or in the discretion of the commis-
30 sioner, make a separate entry on such returns, identifying the specific
31 location and address, license number and licensed capacity of each such
32 garage, parking lot or other similar facility, and shall include such
33 additional information, data and other matters relating to the provision
34 of such monthly or longer term parking, garaging or storing service to
35 tenants as shall be prescribed by the commissioner of finance. If the
36 separate information required to be reported by any owner, lessee or
37 fiduciary holding, leasing or managing real property for any garage,
38 parking lot or other similar facility at such real property that is open
39 or available to the public is not contained in the returns required
40 under section 11-514 of this chapter, or in any amended returns, in any
41 material respect, the provision of parking, garaging or storing service
42 to tenants at such real property shall be deemed the conduct of an unin-
43 corporated business and not incident to the holding, leasing or managing
44 of such real property.

45 (e) Sales representative. An individual, other than one who maintains
46 an office or who employs one or more assistants or who otherwise regu-
47 larly carries on a business, shall not be deemed engaged in an unincor-
48 porated business solely by reason of selling goods, wares, merchandise
49 or insurance for more than one enterprise. For purposes of this subdivi-
50 sion, space utilized solely for the display of merchandise and/or for
51 the maintenance and storage of records normally used in the course of
52 business shall not be deemed an office, and the employment of clerical
53 and secretarial assistance shall not be deemed the employment of assist-
54 ants.

55 (f) Exempt trusts and organizations. A trust or other unincorporated
56 organization which by reason of its purposes or activities is exempt

1 from federal income tax shall not be deemed an unincorporated business
2 regardless of whether subject to federal income tax on unrelated busi-
3 ness taxable income.

4 § 11-503 Imposition of tax. (a) General. A tax at the rate of four
5 percent is hereby imposed for each taxable year, beginning with taxable
6 years ending after January first, nineteen hundred sixty-six, on the
7 unincorporated business taxable income of every unincorporated business
8 wholly or partly carried on within the city. This tax shall be in addi-
9 tion to any other taxes imposed.

10 (b) Credit against tax. (1) For each taxable year beginning after
11 nineteen hundred eighty-six but before nineteen hundred ninety-six:

12 (A) if the tax computed under subdivision (a) of this section is six
13 hundred dollars or less, a credit shall be allowed for the entire amount
14 of such tax;

15 (B) if the tax computed under subdivision (a) of this section exceeds
16 six hundred dollars but is less than eight hundred dollars, a credit
17 shall be allowed in the amount determined by multiplying such tax by a
18 fraction the numerator of which is eight hundred dollars minus the
19 amount of such tax and the denominator of which is two hundred dollars;
20 or

21 (C) if the tax computed under subdivision (a) of this section is eight
22 hundred dollars or more, no credit shall be allowed.

23 (2) For each taxable year beginning in nineteen hundred ninety-six:

24 (A) if the tax computed under subdivision (a) of this section is eight
25 hundred dollars or less, a credit shall be allowed for the entire amount
26 of such tax;

27 (B) if the tax computed under subdivision (a) of this section exceeds
28 eight hundred dollars but is less than one thousand dollars, a credit
29 shall be allowed in the amount determined by multiplying such tax by a
30 fraction the numerator of which is one thousand dollars minus the amount
31 of such tax and the denominator of which is two hundred dollars; or

32 (C) if the tax computed under subdivision (a) of this section is one
33 thousand dollars or more, no credit shall be allowed.

34 (3) For each taxable year beginning after nineteen hundred ninety-six
35 but before two thousand nine:

36 (A) if the tax computed under subdivision (a) of this section is one
37 thousand eight hundred dollars or less, a credit shall be allowed for
38 the entire amount of such tax;

39 (B) if the tax computed under subdivision (a) of this section exceeds
40 one thousand eight hundred dollars but is less than three thousand two
41 hundred dollars, a credit shall be allowed in the amount determined by
42 multiplying such tax by a fraction the numerator of which is three thou-
43 sand two hundred dollars minus the amount of such tax and the denomina-
44 tor of which is one thousand four hundred dollars; or

45 (C) if the tax computed under subdivision (a) of this section is three
46 thousand two hundred dollars or more, no credit shall be allowed.

47 (3-a) For each taxable year beginning after two thousand eight:

48 (A) if the tax computed under subdivision (a) of this section is three
49 thousand four hundred dollars or less, a credit shall be allowed for the
50 entire amount of such tax;

51 (B) if the tax computed under subdivision (a) of this section exceeds
52 three thousand four hundred dollars but is less than five thousand four
53 hundred dollars, a credit shall be allowed in the amount determined by
54 multiplying such tax by a fraction the numerator of which is five thou-
55 sand four hundred dollars minus the amount of such tax and the denomina-
56 tor of which is two thousand dollars; or

1 (C) if the tax computed under subdivision (a) of this section is five
2 thousand four hundred dollars or more, no credit shall be allowed.

3 (4) If separate partnerships, joint ventures or other unincorporated
4 entities have substantially the same partners or members, each of such
5 partners or members has substantially the same interest in each of such
6 partnerships, joint ventures or other unincorporated entities, and such
7 partnerships, joint ventures or other unincorporated entities are
8 engaged in substantially the same business or businesses or in substan-
9 tially related businesses, all of such partnerships, joint ventures or
10 other unincorporated entities shall be treated as one unincorporated
11 business for purposes of this subdivision. The provisions of this para-
12 graph shall not be construed to limit or affect the meaning or applica-
13 tion of any other provision of this chapter.

14 (5) Notwithstanding anything to the contrary, the credit allowable
15 under this subdivision shall be taken prior to any other credit allowed
16 by this section.

17 (c) Credit relating to stock transfer tax. (1) In addition to any
18 other credit permitted under this section, a taxpayer shall be allowed a
19 credit, to be credited or refunded in the manner hereinafter provided in
20 this subdivision, against the tax imposed by this chapter after the
21 allowance of any other credit under this section. The amount of such
22 credit shall be fifty percent of the tax incurred in market making tran-
23 sactions under the provisions of article twelve of the tax law on such
24 transactions subject to such tax occurring on and after August first,
25 nineteen hundred seventy-six and paid by such taxpayer, except when such
26 tax shall have been paid pursuant to section two hundred seventy-nine-a
27 of the tax law.

28 (2) For purposes of this subdivision:

29 a. the term "taxpayer" shall mean any unincorporated business subject
30 to tax under this chapter registered with the United States securities
31 and exchange commission in accordance with subsection (b) of section
32 fifteen of the securities exchange act of nineteen hundred thirty-four,
33 as amended, and acting as a dealer in a transaction described in subpar-
34 agraph b of this paragraph, and

35 b. the term "market making transaction" shall mean any transaction
36 involving a sale, including a short sale, by a dealer of shares or
37 certificates subject to the tax imposed by article twelve of the tax
38 law, provided such shares or certificates are sold:

39 (i) as stock in trade or inventory or as property held for sale in the
40 ordinary course of such dealer's trade or business including transfers
41 which are part of an underwriting,

42 (ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge
43 transaction involving a long or short position in any equity security
44 and a long or short position in a security entitling the holder to
45 acquire or sell such equity security; or (c) a risk arbitrage trans-
46 action in connection with a merger, acquisition, tender offer, recap-
47 italization, reorganization, or similar transaction, or

48 (iii) to offset a transaction made in error.

49 Provided, however, that, except as to subclause (c) of clause (ii) of
50 subparagraph b of this paragraph, the term "market making transaction"
51 shall not include any sale of shares or certificates identified in such
52 dealer's records as a security held for investment within the meaning of
53 section twelve hundred thirty-six of the internal revenue code.

54 (3) The credit allowed under this subdivision for any taxable year
55 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
56 ited or refunded in accordance with the provisions of section 11-526 of

1 this chapter, except as otherwise provided in subdivision (g) of
2 sections 11-512 and 11-514 of this chapter; provided, however, that the
3 provisions of this chapter notwithstanding, the amount to be refunded
4 pursuant to this subdivision shall not be paid prior to the first day of
5 the eighth month following the close of the taxable year, and the
6 provisions of subdivision (c) of section 11-528 of this chapter notwith-
7 standing, interest shall be allowed and paid on the overpayment of the
8 credit under this subdivision from the first day of the eleventh month
9 following the close of the taxable year, or three months after a claim
10 for the credit or refund provided for in this subdivision has been
11 filed, whichever is later.

12 (4) Provided, however, that the credit provided under this subdivi-
13 sion shall be allowed only to the extent that the amount of credit
14 allowable with respect to market making transactions under the
15 provisions of this subdivision (determined without regard to the
16 provisions of this paragraph) exceeds fifty percent of all rebates
17 (provided for under the provisions of section two hundred eighty-a of
18 article twelve of the tax law) allowed for such taxes incurred in the
19 same market making transactions with respect to which the credit is
20 determined. No credit shall be allowed under this subdivision with
21 respect to any tax incurred in market making transactions occurring on
22 or after October first, nineteen hundred eighty-one.

23 (d) Credit relating to certain sales and compensating use taxes. (1)
24 In addition to the credits allowed by subdivisions (b) and (c) of this
25 section, a taxpayer shall be allowed a credit against the tax imposed by
26 this chapter to be credited or refunded in the manner hereinafter
27 provided in this section. The amount of such credit shall be the excess
28 of (A) the amount of sales and compensating use taxes imposed by section
29 eleven hundred seven of the tax law during the taxpayer's taxable year
30 which became legally due on or after and was paid on or after July
31 first, nineteen hundred seventy-seven, less any credit or refund of such
32 taxes, with respect to the purchase or use by the taxpayer of machinery
33 or equipment for use or consumption directly and predominantly in the
34 production of tangible personal property, gas, electricity, refriger-
35 ation or steam for sale, by manufacturing, processing, generating,
36 assembling, refining, mining or extracting, or telephone central office
37 equipment or station apparatus or comparable telegraph equipment for use
38 directly and predominantly in receiving at destination or initiating and
39 switching telephone or telegraph communication, but not including parts
40 with a useful life of one year or less or tools or supplies used in
41 connection with such machinery, equipment or apparatus over (B) the
42 amount of any credit for such sales and compensating use taxes allowed
43 or allowable against the taxes imposed by subchapter two of chapter six
44 of this title, for any periods embraced within the taxable year of the
45 taxpayer under this chapter.

46 (2) The credit allowed under this section for any taxable year shall
47 be deemed to be an overpayment of tax by the taxpayer to be credited or
48 refunded, without interest, in accordance with the provisions of section
49 11-526 of this chapter.

50 (3) Where the taxpayer receives a refund or credit of any tax imposed
51 under section eleven hundred seven of the tax law for which the taxpayer
52 had claimed a credit under the provisions of this section in a prior
53 taxable year, the amount of such tax refund or credit shall be added to
54 the tax imposed by this section, and such amount shall be subtracted in
55 computing unincorporated business taxable income for the taxable year.

1 (e) Credit relating to the annual increase in certain payments to a
2 landlord by a taxpayer relocating industrial and commercial employment
3 opportunities. (1) In addition to any other credit allowed by this
4 section, a taxpayer shall be allowed a credit against the tax imposed by
5 this chapter to be credited or refunded, without interest, in the manner
6 hereinafter provided in this section.

7 (A) Where a taxpayer shall have relocated to the city from a location
8 outside the state, and by such relocation shall have created a minimum
9 of one hundred industrial or commercial employment opportunities, and
10 where such taxpayer shall have entered into a written lease for the
11 relocation premises, the terms of which lease provide for increased
12 additional payments to the landlord which are based solely and directly
13 upon any increase or addition in real estate taxes imposed on the leased
14 premises, the taxpayer upon approval and certification by the industrial
15 and commercial incentive board as hereinafter provided shall be entitled
16 to a credit against the tax imposed by this chapter. The amount of such
17 credit shall be: An amount equal to the annual increased payments actu-
18 ally made by the taxpayer to the landlord which are solely and directly
19 attributable to an increase or addition to the real estate tax imposed
20 upon the leased premises. Such credit shall be allowed only to the
21 extent that the taxpayer has not otherwise claimed said amount as a
22 deduction against the tax imposed by this chapter.

23 The industrial and commercial incentive board in approving and certi-
24 fying to the qualifications of the taxpayer to receive the tax credit
25 provided for herein shall first determine that the applicant has met the
26 requirements of this section, and further, that the granting of the tax
27 credit to the applicant is in the "public interest." In determining
28 that the granting of the tax credit is in the public interest, the board
29 shall make affirmative findings that: the granting of the tax credit to
30 the applicant will not effect an undue hardship on similar taxpayers
31 already located within the city; the existence of this tax incentive has
32 been instrumental in bringing about the relocation of the applicant to
33 the city; and the granting of the tax credit will foster the economic
34 recovery and economic development of the city.

35 The tax credit, if approved and certified by the industrial and
36 commercial incentive board, must be utilized annually by the taxpayer
37 for the length of the term of the lease or for a period not to exceed
38 ten years from the date of relocation, whichever period is shorter.

39 (B) Definitions: When used in this section, "Employment opportunity"
40 means the creation of a full time position of gainful employment for an
41 industrial or commercial employee and the actual hiring of such employee
42 for the said position.

43 "Industrial employee" means one engaged in the manufacture or assembl-
44 ing of tangible goods or the processing of raw materials.

45 "Commercial employee" means one engaged in the buying, selling or
46 otherwise providing of goods or services other than on a retail basis.

47 "Retail" means the selling or otherwise disposing or furnishing of
48 tangible goods or services directly to the ultimate user or consumer.

49 "Full time position" means the hiring of an industrial or commercial
50 employee in a position of gainful employment where the number of hours
51 worked by such employee is not less than thirty hours during any given
52 week.

53 "Industrial and commercial incentive board" means the board created
54 pursuant to subchapter two of chapter two of this title.

55 (2) The credit allowed under this section for any taxable year shall
56 be deemed to be an overpayment of tax by the taxpayer to be credited or

1 refunded, without interest, in accordance with the provisions of section
2 11-526 of this chapter.

3 (f) Credit relating to certain expenses involved in the cost of relo-
4 cating industrial and commercial employment opportunities. (1) In
5 addition to any other credit allowed by this section, a taxpayer shall
6 be allowed a credit against the tax imposed by this chapter to be cred-
7 ited or refunded in the manner hereinafter provided in this section.
8 The amount of such credit shall be:

9 (A) A maximum of three hundred dollars for each commercial employment
10 and a maximum of five hundred dollars for each industrial employment
11 opportunity relocated to the city from an area outside the state. Such
12 credit shall be allowed to a taxpayer who relocates a minimum of ten
13 employment opportunities. The credit shall be allowed against employment
14 opportunity relocation costs incurred by the taxpayer. Such credit shall
15 be allowed only to the extent that the taxpayer has not claimed a
16 deduction for allowable employment opportunity relocation costs. The
17 credit allowed hereunder may be taken by the taxpayer in whole or in
18 part in the year in which the employment opportunity is relocated by
19 such taxpayer or either of the two years succeeding such event;
20 provided, however, that no credit shall be allowed under this subdivi-
21 sion to a taxpayer for industrial employment opportunities relocated to
22 premises (i) that are within an industrial business zone established
23 pursuant to section 22-626 of the code of the preceding municipality and
24 (ii) for which a binding contract to purchase or lease was first entered
25 into by the taxpayer on or after July first, two thousand five.

26 The commissioner of finance is empowered to promulgate rules and regu-
27 lations and to prescribe the form of application to be used.

28 (B) Definitions: When used in this section, "Employment Opportunity"
29 means the creation of a full time position of gainful employment for an
30 industrial or commercial employee and the actual hiring of such employee
31 for the said position.

32 "Industrial Employee" means one engaged in the manufacture or assembl-
33 ing of tangible goods or the processing of raw materials.

34 "Commercial Employee" means one engaged in the buying, selling or
35 otherwise providing of goods or services other than on a retail basis.

36 "Retail" means the selling or otherwise disposing of tangible goods
37 directly to the ultimate user or consumer.

38 "Full Time Position" means the hiring of an industrial or commercial
39 employee in a position of gainful employment where the number of hours
40 worked by such employee is not less than thirty hours during any given
41 work week.

42 "Employment Opportunity Relocation Costs" means the costs incurred by
43 the taxpayer in moving furniture, files, papers and office equipment
44 into the city from a location outside the state; the costs incurred by
45 the taxpayer in the moving from a location outside the state; the costs
46 of installation of telephones and other communications equipment
47 required as a result of the relocation to the city from a location
48 outside the state; the cost incurred in the purchase of office furniture
49 and fixtures required as a result of the relocation to the city from a
50 location outside the state; and the cost of renovation of the premises
51 to be occupied as a result of the relocation provided, however, that
52 such renovation costs shall be allowable only to the extent that they do
53 not exceed seventy-five cents per square foot of the total area utilized
54 by the taxpayer in the occupied premises.

55 (2) The credit allowed under this section for any taxable year shall
56 be deemed to be an overpayment of tax by the taxpayer to be credited or

1 refunded without interest, in accordance with the provisions of section
2 11-526 of this chapter.

3 (i) Relocation and employment assistance credit. (1) In addition to
4 any other credit allowed by this section, a taxpayer that has obtained
5 the certifications required by chapter six-B of title twenty-two of the
6 code of the preceding municipality shall be allowed a credit against the
7 tax imposed by this chapter. The amount of the credit shall be the
8 amount determined by multiplying five hundred dollars or, in the case of
9 a taxpayer that has obtained pursuant to chapter six-B of such title
10 twenty-two a certification of eligibility dated on or after July first,
11 nineteen hundred ninety-five, one thousand dollars or, in the case of an
12 eligible business that has obtained pursuant to chapter six-B of such
13 title twenty-two a certification of eligibility dated on or after July
14 first, two thousand, for a relocation to eligible premises located with-
15 in a revitalization area defined in subdivision (n) of section 22-621 of
16 the code of the preceding municipality, three thousand dollars, by the
17 number of eligible aggregate employment shares maintained by the taxpay-
18 er during the taxable year with respect to particular premises to which
19 the taxpayer has relocated; provided, however, with respect to a relo-
20 cation for which no application for a certificate of eligibility is
21 submitted prior to July first, two thousand three, to eligible premises
22 that are not within a revitalization area, if the date of such relo-
23 cation as determined pursuant to subdivision (j) of section 22-621 of
24 the code of the preceding municipality is before July first, nineteen
25 hundred ninety-five, the amount to be multiplied by the number of eligi-
26 ble aggregate employment shares shall be five hundred dollars, and with
27 respect to a relocation for which no application for a certificate of
28 eligibility is submitted prior to July first, two thousand three, to
29 eligible premises that are within a revitalization area, if the date of
30 such relocation as determined pursuant to subdivision (j) of such
31 section is before July first, nineteen hundred ninety-five, the amount
32 to be multiplied by the number of eligible aggregate employment shares
33 shall be five hundred dollars, and if the date of such relocation as
34 determined pursuant to subdivision (j) of such section is on or after
35 July first, nineteen hundred ninety-five, and before July first, two
36 thousand, one thousand dollars; provided, however, that no credit shall
37 be allowed for the relocation of any retail activity or hotel services;
38 provided, further, that no credit shall be allowed under this subdivi-
39 sion to any taxpayer that has elected pursuant to subdivision (d) of
40 section 22-622 of the code of the preceding municipality to take such
41 credit against a gross receipts tax imposed under chapter eleven of this
42 title; and provided that in the case of an eligible business that has
43 obtained pursuant to chapter six-B of such title twenty-two certifi-
44 cations of eligibility for more than one relocation, the portion of the
45 total amount of eligible aggregate employment shares to be multiplied by
46 the dollar amount specified in this paragraph for each such certifi-
47 cation of a relocation shall be the number of total attributed eligible
48 aggregate employment shares determined with respect to such relocation
49 pursuant to subdivision (o) of section 22-621 of the code of the preced-
50 ing municipality. For purposes of this subdivision, the terms "eligible
51 aggregate employment shares," "relocate," "retail activity" and "hotel
52 services" shall have the meanings ascribed by section 22-621 of the code
53 of the preceding municipality.

54 (2) The credit allowed under this subdivision with respect to eligible
55 aggregate employment shares maintained with respect to particular prem-
56 ises to which the taxpayer has relocated shall be allowed for the first

1 taxable year during which such eligible aggregate employment shares are
2 maintained with respect to such premises and for any of the twelve
3 succeeding taxable years during which eligible aggregate employment
4 shares are maintained with respect to such premises; provided that the
5 credit allowed for the twelfth succeeding taxable year shall be calcu-
6 lated by multiplying the number of eligible aggregate employment shares
7 maintained with respect to such premises in the twelfth succeeding taxa-
8 ble year by the lesser of one and a fraction the numerator of which is
9 such number of days in the taxable year of relocation less the number of
10 days the eligible business maintained employment shares in the eligible
11 premises in the taxable year of relocation and the denominator of which
12 is the number of days in such twelfth succeeding taxable year during
13 which such eligible aggregate employment shares are maintained with
14 respect to such premises. Except as provided in paragraph four of this
15 subdivision, if the amount of the credit allowable under this subdivi-
16 sion for any taxable year exceeds the tax imposed for such year, the
17 excess may be carried over, in order, to the five immediately succeeding
18 taxable years and, to the extent not previously deductible, may be
19 deducted from the taxpayer's tax for such years.

20 (3) The credit allowable under this subdivision shall be deducted
21 after the credits allowed by subdivisions (b) and (j) of this section,
22 but prior to the deduction of any other credit allowed by this section.

23 (4) In the case of a taxpayer that has obtained a certification of
24 eligibility pursuant to chapter six-B of title twenty-two of the code of
25 the preceding municipality dated on or after July first, two thousand
26 for a relocation to eligible premises located within the revitalization
27 area defined in subdivision (n) of section 22-621 of the code of the
28 preceding municipality, the credits allowed under this subdivision, or
29 in the case of a taxpayer that has relocated more than once, the portion
30 of such credits attributed to such certification of eligibility pursuant
31 to paragraph one of this subdivision, against the tax imposed by this
32 chapter for the taxable year of such relocation and for the four taxable
33 years immediately succeeding the taxable year of such relocation, shall
34 be deemed to be overpayments of tax by the taxpayer to be credited or
35 refunded, without interest, in accordance with the provisions of section
36 11-526 of this chapter. For such taxable years, such credits or portions
37 thereof may not be carried over to any succeeding taxable year;
38 provided, however, that this paragraph shall not apply to any relocation
39 for which an application for a certification of eligibility was not
40 submitted prior to July first, two thousand three, unless the date of
41 such relocation is on or after July first, two thousand.

42 (j) (1) If a partner in an unincorporated business is taxable under
43 this chapter and is required to include in unincorporated business taxa-
44 ble income his, her or its distributive share of income, gain, loss and
45 deductions of, or guaranteed payments from, such unincorporated busi-
46 ness, such partner shall be allowed a credit against the tax imposed by
47 this chapter equal to the lesser of the amounts determined in subpara-
48 graphs (A) and (B) of this paragraph:

49 (A) The amount determined in this subparagraph is the product of (i)
50 the sum of (I) the tax imposed by this chapter on the unincorporated
51 business for its taxable year ending within or with the taxable year of
52 the partner and paid by the unincorporated business and (II) the amount
53 of any credit or credits taken by the unincorporated business under this
54 section (except the credit allowed by subdivision (b) of this section)
55 for its taxable year ending within or with the taxable year of the part-
56 ner, to the extent that such credits do not reduce such unincorporated

1 business's tax below zero, and (ii) a fraction, the numerator of which
2 is the net total of the partner's distributive share of income, gain,
3 loss and deductions of, and guaranteed payments from, the unincorporated
4 business for such taxable year, and the denominator of which is the sum,
5 for such taxable year, of the net total distributive shares of income,
6 gain, loss and deductions of, and guaranteed payments to, all partners
7 in the unincorporated business for whom or which such net total, as
8 separately determined for each partner, is greater than zero.

9 (B) The amount determined in this subparagraph is the difference
10 between (i) the tax computed pursuant to this chapter on the unincorporated
11 business taxable income of the partner, without allowance of any
12 credits allowed by this section, and (ii) the tax so computed, deter-
13 mined as if the partner had no such distributive share or guaranteed
14 payments with respect to the unincorporated business, provided, however,
15 that the amounts computed in clauses (i) and (ii) of this subparagraph
16 shall be computed with the following modifications:

17 (I) such amounts shall be computed without taking into account any
18 carryforward or carryback by the partner of a net operating loss;

19 (II) if, prior to taking into account any distributive share or guar-
20 anteed payments from any unincorporated business or any net operating
21 loss carryforward or carryback, the unincorporated business taxable
22 income of the partner is less than zero, such unincorporated business
23 taxable income shall be treated as zero; and

24 (III) if such partner's net total distributive share of income, gain,
25 loss and deductions of, and guaranteed payments from, any unincorporated
26 business is less than zero, such net total shall be treated as zero. The
27 amount determined in this subparagraph shall not be less than zero.

28 (2) (A) Notwithstanding anything to the contrary in paragraph one of
29 this subdivision, the credit or the sum of the credits that may be taken
30 by a partner for a taxable year under this subdivision with respect to
31 an unincorporated business or unincorporated businesses in which he, she
32 or it is a partner shall not exceed the tax imposed on the unincorporat-
33 ed business taxable income of such partner under this chapter for such
34 taxable year reduced by the credit allowed under subdivision (b) of this
35 section. If the credit allowed under paragraph one of this subdivision
36 or the sum of such credits exceeds such tax as so reduced, the amount of
37 the excess may be carried forward, in order, to each of the seven imme-
38 diately succeeding taxable years and, to the extent not previously
39 taken, shall be allowed as a credit in each of such years, provided, the
40 credit determined for the taxable year under paragraph one of this
41 subdivision shall be taken before taking any credit carryforward pursu-
42 ant to this paragraph and the credit carryforward attributable to the
43 earliest taxable year shall be taken before taking a credit carryforward
44 attributable to a subsequent taxable year.

45 (B) Notwithstanding anything to the contrary in subparagraph (A) of
46 this paragraph, in the case of a partner which is a partnership, no
47 credit carryforward to any taxable year shall be allowed unless one or
48 more of the partners therein during such taxable year were persons
49 having a proportionate interest or interests, amounting to at least
50 eighty percent of all such interests, in the unincorporated business
51 gross income and unincorporated business deductions of the partnership
52 which was allowed the credit for which a carryforward is claimed. In
53 such event, the carryforward allowable on account of such credit shall
54 not exceed the percentage of the amount otherwise allowable, determined
55 by dividing (i) the sum of the proportionate interests in the unincorporated
56 business gross income and unincorporated business deductions of

1 the partnership, for the year to which the credit is carried forward,
2 attributable to such partners, by (ii) the sum of such proportionate
3 interests owned by all partners for such taxable year. The amount by
4 which the carryforward otherwise allowable exceeds the amount allowable
5 pursuant to this subparagraph shall not be a carryforward to any other
6 taxable year.

7 (3) The credit allowed under this subdivision shall not be allowed to
8 a partner in an unincorporated business with respect to any tax paid by
9 the unincorporated business under this chapter for any taxable year
10 beginning before July first, nineteen hundred ninety-four.

11 (4) Notwithstanding anything to the contrary, the credit allowable
12 under this subdivision shall be taken after the credit allowed by subdivi-
13 sion (b) of this section is taken, but before any other credit allowed
14 by this section is taken.

15 (5) The commissioner of finance of the city of Staten Island shall
16 convene a working group, consisting of representatives of the department
17 of finance of the city of Staten Island and representatives of affected
18 industries, and other persons the commissioner deems appropriate, to
19 study the treatment under the unincorporated business tax of income from
20 investment and real estate activities and the impact of the credit
21 permitted by this subdivision, including but not limited to cases where
22 interests in a taxpayer are held by another taxpayer subject to tax on
23 unincorporated business taxable income and the first taxpayer is enti-
24 tled to claim a deduction for a net operating loss carryover and the
25 second is not entitled to a corresponding deduction with the result, in
26 certain cases, that the net income allocated to the second taxpayer may
27 be subject to an effective rate of tax in excess of the rate imposed by
28 this chapter. In addition, the working group shall also study the tax
29 treatment of parking garages which are open or available to the general
30 public and which also provide available space to tenants. In conducting
31 such study, such working group shall take into account such factors as
32 economic development, tax administration and other goals of tax policy
33 and shall consider alternatives that would reduce disincentives for
34 investing in corporations and other entities engaged in business in the
35 city of Staten Island, such as exempting income from investment activ-
36 ities from the tax on unincorporated business taxable income. The
37 commissioner shall prepare a report based on the deliberations of the
38 working group on or before April fifteenth, nineteen hundred ninety-
39 five.

40 (k) Credit relating to certain sales and compensating use taxes on
41 certain services. (1) In addition to any other credit allowed by this
42 section, a taxpayer shall be allowed a credit against the tax imposed by
43 this chapter to be credited or refunded in the manner hereinafter
44 provided in this subdivision. The amount of such credit shall be equal
45 to the amount of sales and compensating use taxes imposed by section
46 eleven hundred seven of the tax law during the taxpayer's taxable year,
47 and the amount of any interest imposed in connection therewith, which
48 was paid after January first, nineteen hundred ninety-five, less any
49 credit or refund of such taxes (or such interest), with respect to the
50 purchase or use by the taxpayer of the services described in subdivision
51 (b) of section eleven hundred five-b of the tax law.

52 (2) The credit allowed under this subdivision for any taxable year
53 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
54 ited or refunded, without interest, in accordance with the provisions of
55 section 11-526 of this chapter.

1 (3) Where the taxpayer receives a refund or credit of any tax imposed
2 under section eleven hundred seven of the tax law, or of any interest
3 imposed in connection therewith, for which the taxpayer had claimed a
4 credit under this subdivision in a prior taxable year, the amount of
5 such tax, or such interest, refund or credit shall be added to the tax
6 imposed by this chapter, and such amount shall be subtracted in comput-
7 ing unincorporated business taxable income for the taxable year.

8 (1) Lower Manhattan relocation and employment assistance credit. (1)
9 In addition to any other credit allowed by this section, a taxpayer that
10 has obtained the certifications required by chapter six-C of title twen-
11 ty-two of the code of the preceding municipality shall be allowed a
12 credit against the tax imposed by this chapter. The amount of the credit
13 shall be the amount determined by multiplying three thousand dollars by
14 the number of eligible aggregate employment shares maintained by the
15 taxpayer during the taxable year with respect to eligible premises to
16 which the taxpayer has relocated; provided, however, that no credit
17 shall be allowed for the relocation of any retail activity or hotel
18 services; provided, further, that no credit shall be allowed under this
19 subdivision to any taxpayer that has elected pursuant to subdivision (d)
20 of section 22-624 of the code of the preceding municipality to take such
21 credit against a gross receipts tax imposed under chapter eleven of this
22 title. For purposes of this subdivision, the terms "eligible aggregate
23 employment shares", "eligible premises", "relocate", "retail activity"
24 and "hotel services" shall have the meanings ascribed by section 22-623
25 of the code of the preceding municipality.

26 (2) The credit allowed under this subdivision with respect to eligible
27 aggregate employment shares maintained with respect to eligible premises
28 to which the taxpayer has relocated shall be allowed for the taxable
29 year of the relocation and for any of the twelve succeeding taxable
30 years during which eligible aggregate employment shares are maintained
31 with respect to eligible premises; provided that the credit allowed for
32 the twelfth succeeding taxable year shall be calculated by multiplying
33 the number of eligible aggregate employment shares maintained with
34 respect to eligible premises in the twelfth succeeding taxable year by
35 the lesser of one and a fraction the numerator of which is such number
36 of days in the taxable year of relocation less the number of days the
37 taxpayer maintained employment shares in eligible premises in the taxa-
38 ble year of relocation and the denominator of which is the number of
39 days in such twelfth succeeding taxable year during which such eligible
40 aggregate employment shares are maintained with respect to such prem-
41 ises.

42 (3) Except as provided in paragraph four of this subdivision, if the
43 amount of the credit allowable under this subdivision for any taxable
44 year exceeds the tax imposed for such year, the excess may be carried
45 over, in order, to the five immediately succeeding taxable years and, to
46 the extent not previously deductible, may be deducted from the taxpay-
47 er's tax for such years.

48 (4) The credits allowed under this subdivision, against the tax
49 imposed by this chapter for the taxable year of the relocation and for
50 the four taxable years immediately succeeding the taxable year of such
51 relocation, shall be deemed to be overpayments of tax by the taxpayer to
52 be credited or refunded, without interest, in accordance with the
53 provisions of section 11-526 of this chapter. For such taxable years,
54 such credits or portions thereof may not be carried over to any succeed-
55 ing taxable year.

1 (5) The credit allowable under this subdivision shall be deducted
2 after the credits allowed by subdivisions (b), (i) and (j) of this
3 section, but prior to the deduction of any other credit allowed by this
4 section.

5 (n) Industrial business zone tax credit. (1) For taxable years begin-
6 ning on or after January first, two thousand six, in addition to any
7 other credit allowed by this section, an eligible business that first
8 enters into a binding contract on or after July first, two thousand five
9 to purchase or lease eligible premises to which it relocates shall be
10 allowed a one-time credit against the tax imposed by this chapter to be
11 credited or refunded in the manner hereinafter provided in this subdivi-
12 sion. The amount of such credit shall be one thousand dollars per full-
13 time employee; provided, however, that the amount of such credit shall
14 not exceed the lesser of actual relocation costs or one hundred thousand
15 dollars.

16 (2) When used in this subdivision, the following terms shall have the
17 following meanings:

18 "Eligible business" means any business subject to tax under this chap-
19 ter that (A) has been conducting substantial business operations and
20 engaging primarily in industrial and manufacturing activities at one or
21 more locations within the city of Staten Island or outside the state of
22 New York continuously during the twenty-four consecutive full months
23 immediately preceding relocation, (B) has leased the premises from which
24 it relocates continuously during the twenty-four consecutive full months
25 immediately preceding relocation, (C) first enters into a binding
26 contract on or after July first, two thousand five to purchase or lease
27 eligible premises to which such business will relocate, and (D) will be
28 engaged primarily in industrial and manufacturing activities at such
29 eligible premises.

30 "Eligible premises" means premises located entirely within an indus-
31 trial business zone. For any eligible business, an industrial business
32 zone tax credit shall not be granted with respect to more than one
33 eligible premises.

34 "Full-time employee" means (A) one person gainfully employed in an
35 eligible premises by an eligible business where the number of hours
36 required to be worked by such person is not less than thirty-five hours
37 per week; or (B) two persons gainfully employed in an eligible premises
38 by an eligible business where the number of hours required to be worked
39 by each such person is more than fifteen hours per week but less than
40 thirty-five hours per week.

41 "Industrial business zone" means an area within the city of Staten
42 Island established pursuant to section 22-626 of the code of the preced-
43 ing municipality.

44 "Industrial business zone tax credit" means a credit, as provided for
45 in this subdivision, against a tax imposed under this chapter.

46 "Industrial and manufacturing activities" means activities involving
47 the assembly of goods to create a different article, or the processing,
48 fabrication, or packaging of goods. Industrial and manufacturing activ-
49 ities shall not include waste management or utility services.

50 "Relocation" means the physical relocation of furniture, fixtures,
51 equipment, machinery and supplies directly to an eligible premises, from
52 one or more locations of an eligible business, including at least one
53 location at which such business conducts substantial business operations
54 and engages primarily in industrial and manufacturing activities. For
55 purposes of this subdivision, the date of relocation shall be (A) the
56 date of the completion of the relocation to the eligible premises or (B)

1 ninety days from the commencement of the relocation to the eligible
2 premises, whichever is earlier.

3 "Relocation costs" means costs incurred in the relocation of such
4 furniture, fixtures, equipment, machinery and supplies, including, but
5 not limited to, the cost of dismantling and reassembling equipment and
6 the cost of floor preparation necessary for the reassembly of the equip-
7 ment. Relocation costs shall include only such costs that are incurred
8 during the ninety-day period immediately following the commencement of
9 the relocation to an eligible premises. Relocation costs shall not
10 include any costs for structural or capital improvements or items
11 purchased in connection with the relocation.

12 (3) The credit allowed under this subdivision for any taxable year
13 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
14 ited or refunded without interest, in accordance with the provisions of
15 section 11-526 of this chapter.

16 (4) The number of full-time employees for the purposes of calculating
17 an industrial business zone tax credit shall be the average number of
18 full-time employees, calculated on a weekly basis, employed in the
19 eligible premises by the eligible business in the fifty-two week period
20 immediately following relocation.

21 (5) The credit allowed under this subdivision must be taken by the
22 taxpayer in the taxable year in which such fifty-two week period ends.

23 (6) For the purposes of calculating entire net income in the taxable
24 year that an industrial business zone tax credit is allowed, a taxpayer
25 must add back the amount of the credit allowed under this subdivision,
26 to the extent of any relocation costs deducted in the current taxable
27 year or a prior taxable year in calculating federal taxable income.

28 (7) The credit allowed under this subdivision shall not be granted for
29 an eligible business for more than one relocation. Notwithstanding the
30 foregoing, an industrial business zone tax credit allowed under this
31 subdivision shall not be granted if the eligible business receives bene-
32 fits pursuant to chapter six-B or six-C of title twenty-two of the code
33 of the preceding municipality, through a grant program administered by
34 the business relocation assistance corporation, or through the Staten
35 Island city printers relocation fund grant.

36 (8) The commissioner of finance is authorized to promulgate rules and
37 regulations and to prescribe forms necessary to effectuate the purposes
38 of this subdivision.

39 The commissioner of finance is empowered to promulgate rules and regu-
40 lations and to prescribe the form of application to be used.

41 (B) Definitions: When used in this section, "Employment Opportunity"
42 means the creation of a full time position of gainful employment for an
43 industrial or commercial employee and the actual hiring of such employee
44 for the said position.

45 "Industrial Employee" means one engaged in the manufacture or assembl-
46 ing of tangible goods or the processing of raw materials.

47 "Commercial Employee" means one engaged in the buying, selling or
48 otherwise providing of goods or services other than on a retail basis.

49 "Retail" means the selling or otherwise disposing of tangible goods
50 directly to the ultimate user or consumer.

51 "Full Time Position" means the hiring of an industrial or commercial
52 employee in a position of gainful employment where the number of hours
53 worked by such employee is not less than thirty hours during any given
54 work week.

55 "Employment Opportunity Relocation Costs" means the costs incurred by
56 the taxpayer in moving furniture, files, papers and office equipment

1 into the city from a location outside the state; the costs incurred by
2 the taxpayer in the moving from a location outside the state; the costs
3 of installation of telephones and other communications equipment
4 required as a result of the relocation to the city from a location
5 outside the state; the cost incurred in the purchase of office furniture
6 and fixtures required as a result of the relocation to the city from a
7 location outside the state; and the cost of renovation of the premises
8 to be occupied as a result of the relocation provided, however, that
9 such renovation costs shall be allowable only to the extent that they do
10 not exceed seventy-five cents per square foot of the total area utilized
11 by the taxpayer in the occupied premises.

12 (2) The credit allowed under this section for any taxable year shall
13 be deemed to be an overpayment of tax by the taxpayer to be credited or
14 refunded without interest, in accordance with the provisions of section
15 11-526 of this chapter.

16 (o) Biotechnology credit. (a)(1) A taxpayer that is a qualified emerg-
17 ing technology company, engages in biotechnologies, and meets the eligi-
18 bility requirements of this subdivision, shall be allowed a credit
19 against the tax imposed by this subchapter. The amount of credit shall
20 be equal to the sum of the amounts specified in subparagraphs three,
21 four and five of this paragraph, subject to the limitations in subpara-
22 graph seven of this paragraph and paragraph (b) of this subdivision. For
23 the purposes of this subdivision, "qualified emerging technology compa-
24 ny" shall mean a company located in city: (A) whose primary products or
25 services are classified as emerging technologies and whose total annual
26 product sales are ten million dollars or less; or (B) a company that has
27 research and development activities in city and whose ratio of research
28 and development funds to net sales equals or exceeds the average ratio
29 for all surveyed companies classified as determined by the National
30 Science Foundation in the most recent published results from its Survey
31 of Industry Research and Development, or any comparable successor survey
32 as determined by the department, and whose total annual product sales
33 are ten million dollars or less. For the purposes of this subdivision,
34 the definition of research and development funds shall be the same as
35 that used by the National Science Foundation in the aforementioned
36 survey. For the purposes of this subdivision, "biotechnologies" shall
37 mean the technologies involving the scientific manipulation of living
38 organisms, especially at the molecular and/or the sub-molecular genetic
39 level, to produce products conducive to improving the lives and health
40 of plants, animals, and humans; and the associated scientific research,
41 pharmacological, mechanical, and computational applications and services
42 connected with these improvements. Activities included with such appli-
43 cations and services shall include, but not be limited to, alternative
44 mRNA splicing, DNA sequence amplification, antigenetic switching bioaug-
45 mentation, bioenrichment, bioremediation, chromosome walking, cytogenet-
46 ic engineering, DNA diagnosis, fingerprinting, and sequencing, electro-
47 poration, gene translocation, genetic mapping, site-directed
48 mutagenesis, bio-transduction, bio-mechanical and bio-electrical engi-
49 neering, and bio-informatics.

50 (2) An eligible taxpayer shall (A) have no more than one hundred full-
51 time employees, of which at least seventy-five percent are employed in
52 the city, (B) have a ratio of research and development funds to net
53 sales, as referred to in section thirty-one hundred two-e of the public
54 authorities law, which equals or exceeds six percent during the calendar
55 year ending with or within the taxable year for which the credit is
56 claimed, and (C) have gross revenues, along with the gross revenues of

1 its "affiliates" and "related members" not exceeding twenty million
2 dollars for the calendar year immediately preceding the calendar year
3 ending with or within the taxable year for which the credit is claimed.
4 For the purposes of this subdivision, "affiliates" shall mean those
5 corporations that are members of the same affiliated group, as defined
6 in section fifteen hundred four of the internal revenue code, as the
7 taxpayer. For the purposes of this subdivision, "related members" shall
8 mean a person, corporation, or other entity, including an entity that is
9 treated as a partnership or other pass-through vehicle for purposes of
10 federal taxation, whether such person, corporation or entity is a
11 taxpayer or not, where one such person, corporation or entity, or set of
12 related persons, corporations or entities, directly or indirectly owns
13 or controls a controlling interest in another entity. Such entity or
14 entities may include all taxpayers under chapters six, eleven and seven-
15 teen of this title, and subchapters two and three of this chapter. A
16 controlling interest shall mean, in the case of a corporation, either
17 thirty percent or more of the total combined voting power of all classes
18 of stock of such corporation, or thirty percent or more of the capital,
19 profits or beneficial interest in such voting stock of such corporation;
20 and in the case of a partnership, association, trust or other entity,
21 thirty percent or more of the capital, profits or beneficial interest in
22 such partnership, association, trust or other entity.

23 (3) An eligible taxpayer shall be allowed a credit for eighteen per
24 centum of the cost or other basis for federal income tax purposes of
25 research and development property that is acquired by the taxpayer by
26 purchase as defined in section 179(d) of the internal revenue code and
27 placed in service during the calendar year that ends with or within the
28 taxable year for which the credit is claimed. Provided, however, for the
29 purposes of this paragraph only, an eligible taxpayer shall be allowed a
30 credit for such percentage of the (A) cost or other basis for federal
31 income tax purposes for property used in the testing or inspection of
32 materials and products, (B) the costs or expenses associated with quali-
33 ty control of the research and development, (C) fees for use of sophis-
34 ticated technology facilities and processes, (D) fees for the production
35 or eventual commercial distribution of materials and products resulting
36 from the activities of an eligible taxpayer as long as such activities
37 fall under activities relating to biotechnologies. The costs, expenses
38 and other amounts for which a credit is allowed and claimed under this
39 paragraph shall not be used in the calculation of any other credit
40 allowed under this subchapter. For the purposes of this subdivision,
41 "research and development property" shall mean property that is used for
42 purposes of research and development in the experimental or laboratory
43 sense. Such purposes shall not be deemed to include the ordinary testing
44 or inspection of materials or products for quality control, efficiency
45 surveys, management studies, consumer surveys, advertising, promotions,
46 or research in connection with literary, historical or similar projects.

47 (4) An eligible taxpayer shall be allowed a credit for nine per centum
48 of qualified research expenses paid or incurred by the taxpayer in the
49 calendar year ending with or within the taxable year for which the cred-
50 it is claimed. For the purposes of this subdivision, "qualified research
51 expenses" shall mean expenses associated with in-house research and
52 processes, and costs associated with the dissemination of the results of
53 the products that directly result from such research and development
54 activities; provided, however, that such costs shall not include adver-
55 tising or promotion through media. In addition, costs associated with
56 the preparation of patent applications, patent application filing fees,

1 patent research fees, patent examinations fees, patent post allowance
2 fees, patent maintenance fees, and grant application expenses and fees
3 shall qualify as qualified research expenses. In no case shall the cred-
4 it allowed under this paragraph apply to expenses for litigation or the
5 challenge of another entity's intellectual property rights, or for
6 contract expenses involving outside paid consultants.

7 (5) An eligible taxpayer shall be allowed a credit for qualified high-
8 technology training expenditures as described in this paragraph paid or
9 incurred by the taxpayer during the calendar year that ends with or
10 within the taxable year for which the credit is claimed.

11 (A) The amount of credit shall be one hundred percent of the training
12 expenses described in subparagraph (C) of this paragraph, subject to a
13 limitation of no more than four thousand dollars per employee per calen-
14 dar year for such training expenses.

15 (B) Qualified high-technology training shall include a course or
16 courses taken and satisfactorily completed by an employee of the taxpay-
17 er at an accredited, degree granting post-secondary college or universi-
18 ty in city that (i) directly relates to biotechnology activities, and
19 (ii) is intended to upgrade, retrain or improve the productivity or
20 theoretical awareness of the employee. Such course or courses may
21 include, but are not limited to, instruction or research relating to
22 techniques, meta, macro, or micro-theoretical or practical knowledge
23 bases or frontiers, or ethical concerns related to such activities. Such
24 course or courses shall not include classes in the disciplines of
25 management, accounting or the law or any class designed to fulfill the
26 discipline specific requirements of a degree program at the associate,
27 baccalaureate, graduate or professional level of these disciplines.
28 Satisfactory completion of a course or courses shall mean the earning
29 and granting of credit or equivalent unit, with the attainment of a
30 grade of "B" or higher in a graduate level course or courses, a grade of
31 "C" or higher in an undergraduate level courses or courses, or a similar
32 measure of competency for a course that is not measured according to a
33 standard grade formula.

34 (C) Qualified high-technology training expenditures shall include
35 expenses for tuition and mandatory fees, software required by the insti-
36 tution, fees for textbooks or other literature required by the institu-
37 tion offering the course or courses, minus applicable scholarships and
38 tuition or fee waivers not granted by the taxpayer or any affiliates of
39 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified
40 high-technology expenditures do not include room and board, computer
41 hardware or software not specifically assigned for such course or cours-
42 es, late-charges, fines or membership dues and similar expenses. Such
43 qualified expenditures shall not be eligible for the credit provided by
44 this section unless the employee for whom the expenditures are disbursed
45 is continuously employed by the taxpayer in a full-time, full-year posi-
46 tion primarily located at a qualified site during the period of such
47 coursework and lasting through at least one hundred eighty days after
48 the satisfactory completion of the qualifying course-work. Qualified
49 high-technology training expenditures shall not include expenses for
50 in-house or shared training outside of a city higher education institu-
51 tion or the use of consultants outside of credit granting courses,
52 whether such consultants function inside of such higher education insti-
53 tution or not.

54 (D) If a taxpayer relocates from an academic business incubator facil-
55 ity partnered with an accredited post-secondary education institution
56 located within city, which provides space and business support services

1 to taxpayers, to another site, the credit provided in this subdivision
2 shall be allowed for all expenditures referenced in subparagraph (C) of
3 this paragraph paid or incurred in the two preceding calendar years that
4 the taxpayer was located in such an incubator facility for employees of
5 the taxpayer who also relocate from said incubator facility to such city
6 site and are employed and primarily located by the taxpayer in city.
7 Such expenditures in the two preceding years shall be added to the
8 amounts otherwise qualifying for the credit provided by this subdivision
9 that were paid or incurred in the calendar year that the taxpayer relo-
10 cates from such a facility. Such expenditures shall include expenses
11 paid for an eligible employee who is a full-time, full-year employee of
12 said taxpayer during the calendar year that the taxpayer relocated from
13 an incubator facility notwithstanding (i) that such employee was
14 employed full or part-time as an officer, staff-person or paid intern of
15 the taxpayer when such taxpayer was located at such incubator facility
16 or (ii) that such employee was not continuously employed when such
17 taxpayer was located at the incubator facility during the one hundred
18 eighty day period referred to in subparagraph (C) of this paragraph,
19 provided such employee received wages or equivalent income for at least
20 seven hundred fifty hours during any twenty-four month period when the
21 taxpayer was located at the incubator facility. Such expenditures shall
22 include payments made to such employee after the taxpayer has relocated
23 from the incubator facility for qualified expenditures if such payments
24 are made to reimburse an employee for expenditures paid by the employee
25 during such two preceding years. The credit provided under this para-
26 graph shall be allowed in any taxable year that the taxpayer qualifies
27 as an eligible taxpayer.

28 (E) For purposes of this subdivision the term "academic year" shall
29 mean the annual period of sessions of a post-secondary college or
30 university.

31 (F) For the purposes of this subdivision the term "academic incubator
32 facility" shall mean a facility providing low-cost space, technical
33 assistance, support services and educational opportunities, including
34 but not limited to central services provided by the manager of the
35 facility to the tenants of the facility, to an entity located in city.
36 Such entity's primary activity must be in biotechnologies, and such
37 entity must be in the formative stage of development. The academic incu-
38 bator facility and the entity must act in partnership with an accredited
39 post-secondary college or university located in city. An academic incu-
40 bator facility's mission shall be to promote job creation, entrepreneur-
41 ship, technology transfer, and provide support services to incubator
42 tenants, including, but not limited to, business planning, management
43 assistance, financial-packaging, linkages to financing services, and
44 coordinating with other sources of assistance.

45 (6) An eligible taxpayer may claim credits under this subdivision for
46 three consecutive years. In no case shall the credit allowed by this
47 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
48 calendar year for eligible expenditures made during such calendar year.

49 (7) The credit allowed under this subdivision for any taxable year
50 shall not reduce the tax due for such year to less than the amount
51 computed in subdivision (a) of this section. Provided, however, if the
52 amount of credit allowed under this subdivision for any taxable year
53 reduces the tax to such amount, any amount of credit not deductible in
54 such taxable year shall be treated as an overpayment of tax to be cred-
55 ited or refunded in accordance with the provisions of section 11-526 of

1 this chapter; provided, however, that notwithstanding the provisions of
2 section 11-528 of this chapter, no interest shall be paid thereon.

3 (8) The credit allowed under this subdivision shall only be allowed
4 for taxable years beginning on or after January first, two thousand ten
5 and before January first, two thousand nineteen.

6 (b)(1) The percentage of the credit allowed to a taxpayer under this
7 subdivision in any calendar year shall be:

8 (A) If the average number of individuals employed full time by a
9 taxpayer in the city during the calendar year that ends with or within
10 the taxable year which the credit is claimed is at least one hundred
11 five percent of the taxpayer's base year employment, one hundred
12 percent, except that in no case shall the credit allowed under this
13 clause exceed two hundred fifty thousand dollars per calendar year.
14 Provided, however, the increase in base year employment shall not apply
15 to a taxpayer allowed a credit under this subdivision that was (I)
16 located outside of the city, (II) not doing business, or (III) did not
17 have any employees, in the year preceding the first year that the credit
18 is claimed. Any such taxpayer shall be eligible for one hundred percent
19 of the credit for the first calendar year that ends with or within the
20 taxable year for which the credit is claimed, provided that such taxpay-
21 er locates in the city, begins doing business in the city or hires
22 employees in the city during such calendar year and is otherwise eligi-
23 ble for the credit pursuant to the provisions of this subdivision.

24 (B) If the average number of individuals employed full time by a
25 taxpayer in the city during the calendar year that ends with or within
26 the taxable year for which the credit is claimed is less than one
27 hundred five percent of the taxpayer's base year employment, fifty
28 percent, except that in no case shall the credit allowed under this
29 clause exceed one hundred twenty five thousand dollars per calendar
30 year. In the case of an entity located in city receiving space and busi-
31 ness support services by an academic incubator facility, if the average
32 number of individuals employed full time by such entity in the city
33 during the calendar year in which the credit allowed under this subdivi-
34 sion is claimed is less than one hundred five percent of the taxpayer's
35 base year employment, the credit shall be zero.

36 (2) For the purposes of this subdivision, "base year employment" means
37 the average number of individuals employed full-time by the taxpayer in
38 the city in the year preceding the first calendar year that ends with or
39 within the taxable year for which the credit is claimed.

40 (3) For the purposes of this subdivision, average number of individ-
41 uals employed full-time shall be computed by adding the number of such
42 individuals employed by the taxpayer at the end of each quarter during
43 each calendar year or other applicable period and dividing the sum so
44 obtained by the number of such quarters occurring within such calendar
45 year or other applicable period.

46 (4) Notwithstanding anything contained in this section to the contra-
47 ry, the credit provided by this subdivision shall be allowed against the
48 taxes authorized by this chapter for the taxable year after reduction by
49 all other credits permitted by this chapter.

50 (p) Beer production credit. (1) A taxpayer subject to tax under this
51 chapter, that is registered as a distributor under article eighteen of
52 the tax law, and that produces sixty million or fewer gallons of beer in
53 this state in the taxable year, shall be allowed a credit against the
54 tax imposed by this chapter in the amount specified in paragraph two of
55 this subdivision. Provided, however, that no credit shall be allowed for
56 any beer produced in excess of fifteen million five hundred thousand

1 gallons in the taxable year. Notwithstanding anything in this title to
2 the contrary, if a partnership is allowed a credit under this subdivi-
3 sion, a taxpayer that is a partner in such partnership shall not be
4 allowed a credit under this subdivision for any taxable year that
5 includes the last day of the taxable year for which the partnership is
6 allowed such credit.

7 (2) The amount of the credit per taxpayer per taxable year for each
8 gallon of beer produced in the city on or after January first, two thou-
9 sand seventeen shall be determined as follows:

10 (i) for the first five hundred thousand gallons of beer produced in
11 the city in the taxable year, the credit shall equal twelve cents per
12 gallon; and

13 (ii) for each gallon of beer produced in the city in the taxable year
14 in excess of five hundred thousand gallons, the credit shall equal three
15 and eighty-six one hundredths cents per gallon. The credit allowed under
16 this subdivision for any taxable year shall be treated as an overpayment
17 of tax to be credited or refunded in accordance with the provisions of
18 section 11-526 of this chapter; provided, however, that notwithstanding
19 the provisions of section 11-528 of this chapter, no interest shall be
20 paid thereon.

21 (q) Credit for the provision of child care. In addition to any other
22 credit allowed under this section, a taxpayer whose application for a
23 credit authorized by section 11-144 of this title has been approved by
24 the department of finance shall be allowed a credit against the tax
25 imposed by this chapter. The amount of the credit shall be determined as
26 provided in such section. To the extent the amount of the credit allowed
27 by this subdivision exceeds the amount of tax due pursuant to this chap-
28 ter, as calculated without such credit, such excess amount shall be
29 treated as an overpayment of tax to be credited or refunded in accord-
30 ance with the provisions of section 11-526 of this chapter, provided,
31 however, that notwithstanding the requirements of section 11-528 of this
32 chapter to the contrary, no interest shall be paid thereon.

33 § 11-504 Taxable years to which tax applies; tax for taxable years
34 beginning prior to and ending after January first, nineteen hundred
35 sixty-six. (a) General. The tax imposed by section 11-503 of this
36 chapter, with any modification permitted by subdivision (b) of this
37 section, is imposed for each taxable year beginning with taxable years
38 ending on or after January first, nineteen hundred sixty-six.

39 (b) Alternate methods for determining tax for taxable years ending on
40 or after January first, nineteen hundred sixty-six. (1) The tax for any
41 taxable year ending on or after January first, nineteen hundred sixty-
42 six and before December thirty-first, nineteen hundred sixty-six, shall
43 be an amount equal to the tax which would have been imposed had section
44 11-503 of this chapter been in effect for the entire taxable year,
45 multiplied by the number of months, or major portions thereof, in such
46 taxable year which occur after December thirty-first, nineteen hundred
47 sixty-five and divided by the number of months, or major portions there-
48 of, in such taxable year.

49 (2) In lieu of the method of computation of tax prescribed in para-
50 graph one of this subdivision, if the taxpayer maintained adequate
51 records for the portion of any taxable year ending on or after January
52 first, nineteen hundred sixty-six, and before December thirty-first,
53 nineteen hundred sixty-six, which falls within the calendar year nine-
54 teen hundred sixty-six, the tax for such taxable year at the election of
55 the taxpayer may be computed on the basis of the unincorporated business
56 taxable income which the taxpayer would have reported had he or she

1 filed a federal income tax return for a taxable year beginning January
2 first, nineteen hundred sixty-six and ending with the close of such
3 taxable year ending before December thirty-first, nineteen hundred
4 sixty-six. Such taxable year beginning January first, nineteen hundred
5 sixty-six and ending before December thirty-first, nineteen hundred
6 sixty-six shall be deemed, unless clearly indicated otherwise, to be the
7 taxable year of the taxpayer. For purposes of this paragraph, the unin-
8 corporated business exemptions allowable under section 11-510 of this
9 chapter, the credit allowable under subdivision (b) of section 11-503 of
10 this chapter and any net operating loss deduction as modified pursuant
11 to subdivision (b) of section 11-507 of this chapter shall each be
12 reduced by the same part of such exemptions, credit, or net operating
13 loss deduction, as the case may be, as the number of months, or major
14 portions thereof, in the taxable year occurring before January first,
15 nineteen hundred sixty-six is of the number of months, or major portions
16 thereof, in such taxable year. Except as provided in paragraph two, the
17 tax for such period ending before December thirty-first, nineteen
18 hundred sixty-six, shall be computed in accordance with the other
19 provisions of this chapter.

20 § 11-505 Unincorporated business taxable income. The unincorporated
21 business taxable income of an unincorporated business shall be the
22 excess of its unincorporated business entire net income allocated to the
23 city, less the amount of:

24 (1) Its deductions under section 11-509 of this chapter not subject to
25 allocation; and

26 (2) Its unincorporated business exemptions under section 11-510 of
27 this chapter.

28 § 11-506 Unincorporated business gross income. (a) (1) General.
29 Unincorporated business gross income of an unincorporated business means
30 the sum of the items of income and gain of the business, of whatever
31 kind and in whatever form paid, includible in gross income for the taxa-
32 ble year for federal income tax purposes, including income and gain from
33 any property employed in the business, or from liquidation of the busi-
34 ness, or from collection of installment obligations of the business, or
35 from the sale or other disposition by an unincorporated entity of an
36 interest in another unincorporated entity if and to the extent such
37 income or gain is attributable to a trade, business, profession or occu-
38 pation carried on in whole or in part in the city by such other unincor-
39 porated entity, with the modifications specified in this section.

40 (2) The character of a partner's distributive share of gross income,
41 gains, losses and deductions of an unincorporated entity shall be deter-
42 mined as if such gross income, gains, losses and deductions were real-
43 ized directly by such partner regardless of how the interest in the
44 unincorporated entity was acquired and regardless of whether the
45 distributive share is proportionate to the partner's capital interest in
46 the unincorporated entity, provided, however, this paragraph shall not
47 apply to payments to a partner treated as occurring between the unincor-
48 porated entity and one who is not a partner under section seven hundred
49 seven of the internal revenue code, and provided, further, this para-
50 graph shall not affect the determination of whether gross income, gains,
51 losses or deductions of an unincorporated entity are subject to the tax
52 imposed by this chapter as realized from an unincorporated business.

53 (b) Modifications increasing federal gross income. There shall be
54 added to federal gross income of the business the following items
55 attributable to the business:

1 (1) Interest income on obligations of any state other than this state,
2 or of a political subdivision of any such other state unless created by
3 compact or agreement to which this state is a party.

4 (2) Interest or dividend income on obligations or securities of any
5 authority, commission, or instrumentality of the United States, which
6 the laws of the United States exempt from federal income tax but not
7 from state or local income taxes.

8 (3) In the case of a taxpayer who has exercised the election permitted
9 by subdivision (b) of section 11-509 of this chapter, if the property to
10 which such election relates was sold or otherwise disposed of during the
11 taxable year, the amount required by such subdivision to be added to
12 federal gross income.

13 (4) The entire amount allowable as an exclusion or deduction for stock
14 transfer taxes imposed by article twelve of the tax law in determining
15 federal gross income but only to the extent that such taxes are incurred
16 and paid in market making transactions.

17 (5) The amount allowed as an exclusion or deduction for sales and use
18 taxes imposed by section eleven hundred seven of the tax law in deter-
19 mining federal gross income but only such portion of such exclusion or
20 deduction which is not in excess of the amount of the credit allowed
21 pursuant to subdivision (d) of section 11-503 of this chapter.

22 (6) The amount allowed as an exclusion or deduction as rent in deter-
23 mining federal gross income but only such portion of such exclusion or
24 deduction which is not in excess of the amount of the credit allowed
25 pursuant to subdivision (e) of section 11-503 of this chapter.

26 (7) The amount allowed as an exclusion or deduction in determining
27 federal gross income but only such portion of such exclusion or
28 deduction which is not in excess of the amount of the credit allowed
29 pursuant to subdivision (f) of section 11-503 of this chapter.

30 (8) For taxable years beginning after December thirty-first, nineteen
31 hundred eighty-one, except with respect to property which is a qualified
32 mass commuting vehicle described in subparagraph (D) of paragraph eight
33 of subsection (f) of section one hundred sixty-eight of the internal
34 revenue code, relating to qualified mass commuting vehicles, any amount
35 which would properly be includible for federal income tax purposes had
36 the taxpayer not made the election permitted pursuant to such paragraph
37 eight as it was in effect for agreements entered into prior to January
38 first, nineteen hundred eighty-four.

39 (9) Upon the disposition of property to which subdivision (o) of
40 section 11-507 of this chapter applies, the amount, if any, by which the
41 aggregate of the amounts described in such subdivision fifteen attribut-
42 able to such property exceeds the aggregate of the amounts described in
43 subdivision (n) of section 11-507 of this chapter attributable to such
44 property.

45 (10) The amount allowed as an exclusion or deduction for sales and use
46 taxes imposed by section eleven hundred seven of the tax law in deter-
47 mining federal gross income, but only such portion of such exclusion or
48 deduction which is not in excess of the amount of the credit allowed
49 pursuant to subdivision (g) of section 11-503 of this chapter.

50 (12) The amount allowed as an exclusion or deduction for sales and use
51 taxes imposed by section eleven hundred seven of the tax law, or for any
52 interest imposed in connection therewith, in determining federal gross
53 income, but only such portion of such exclusion or deduction which is
54 not in excess of the amount of the credit allowed pursuant to subdivi-
55 sion (k) of section 11-503 of this chapter.

1 (13) Notwithstanding any other provision of this chapter to the
2 contrary, the amount allowed as an exclusion or deduction in determining
3 federal gross income of any loss, including but not limited to, losses
4 from notional principal contracts, losses, other than as a dealer, from
5 the holding, sale, disposition, assumption, offset or termination of a
6 position in, property, as defined in paragraph one of subdivision (c) of
7 section 11-502 of this chapter, or other substantially similar losses
8 from ordinary and routine trading or investment activity to the extent
9 determined by the commissioner of finance, realized in connection with
10 activities described in paragraph two of subdivision (c) of section
11 11-502 of this chapter if, and to the extent that, such activities are
12 not deemed an unincorporated business carried on by the taxpayer pursu-
13 ant to the provisions of subdivision (c) of section 11-502 of this chap-
14 ter.

15 (14) Notwithstanding any other provision of this chapter to the
16 contrary, in the case of a taxpayer that is an unincorporated entity
17 described in subparagraph (B) of paragraph four of subdivision (c) of
18 section 11-502 of this chapter, the amount allowed as an exclusion or
19 deduction in determining federal gross income of any loss realized from
20 the sale or other disposition of an interest in another unincorporated
21 entity if, and to the extent that, such loss is attributable to activ-
22 ities of such other unincorporated entity not deemed an unincorporated
23 business carried on by the taxpayer pursuant to the provisions of subdi-
24 vision (c) of section 11-502 of this chapter.

25 (15) Notwithstanding any other provision of this chapter to the
26 contrary, the amount allowed as an exclusion or deduction in determining
27 federal gross income of any loss realized from the holding, leasing or
28 managing of real property if, and to the extent that, such holding,
29 leasing or managing of real property is not deemed an unincorporated
30 business carried on by the taxpayer pursuant to the provisions of subdi-
31 vision (d) of section 11-502 of this chapter.

32 (16) Notwithstanding any other provision of this chapter to the
33 contrary, the amount allowed as an exclusion or deduction in determining
34 federal gross income of any loss realized from the provision by an
35 owner, lessee or fiduciary holding, leasing or managing real property of
36 the service of parking, garaging or storing of motor vehicles on a
37 monthly or longer term basis to tenants at such real property if, and to
38 the extent that, the provision of such services to such tenants is not
39 deemed an unincorporated business carried on by the taxpayer pursuant to
40 the provisions of subdivision (d) of section 11-502 of this chapter.

41 (17) For taxable years beginning in two thousand nineteen and two
42 thousand twenty, the amount of the increase in the federal interest
43 deduction allowed pursuant to section 163(j)(10) of the internal revenue
44 code.

45 (18) Notwithstanding any other provision of this chapter to the
46 contrary, for taxable years beginning before January first, two thousand
47 twenty-one, the amount of increase in the federal deduction allowed
48 pursuant to any amendment to section 461(l) of the internal revenue code
49 made after March first, two thousand twenty.

50 (c) Modifications reducing federal gross income. There shall be
51 subtracted from federal gross income of the business the following items
52 attributable to the business:

53 (1) Interest income on obligations of the United States and its
54 possessions to the extent includible in gross income for federal income
55 tax purposes;

1 (2) Interest or dividend income on obligations or securities of any
2 authority, commission or instrumentality of the United States to the
3 extent includible in gross income for federal income tax purposes but
4 exempt from state or local income taxes under the laws of the United
5 States;

6 (3) Interest or dividend income on obligations or securities to the
7 extent exempt from income tax under the laws of the city or this state
8 authorizing the issuance of such obligations or securities but includi-
9 ble in gross income for federal income tax purposes;

10 (3-a) Fifty percent of dividends to the extent includible in gross
11 income for federal income tax purposes and not subtracted under para-
12 graph two or three of this subdivision, provided, however, that there
13 shall be no subtraction pursuant to this paragraph for any portion of a
14 dividend from stock with respect to which a dividend deduction would be
15 disallowed by subsection (c) of section two hundred forty-six of the
16 internal revenue code if the unincorporated business were a corporation;

17 (4) The amount of any refund or credit for overpayment of income taxes
18 imposed by the city, this state or any other taxing jurisdiction, or the
19 tax imposed by article thirteen-A of the tax law, to the extent properly
20 included in gross income for federal tax purposes;

21 (5) With respect to gain derived from the sale or other disposition of
22 any property acquired prior to January first, nineteen hundred sixty-
23 six, except property described in subsections one and four of section
24 twelve hundred twenty-one of the internal revenue code, the difference
25 between:

26 (a) the amount of gain included in federal gross income with respect
27 to each such property, and

28 (b) the amount of gain, if smaller than the amount described in
29 subparagraph (a) of this paragraph, that would be included in federal
30 gross income with respect to each such property if the federal adjusted
31 basis of such property on the date of the sale or other disposition had
32 been equal to its fair market value on January first, nineteen hundred
33 sixty-six, or the date of its sale or other disposition prior to January
34 first, nineteen hundred sixty-six, plus or minus all adjustments to
35 basis made with respect to such property for federal income tax purposes
36 for periods on and after January first, nineteen hundred sixty-six;
37 provided, however, that the total modification provided by this subpara-
38 graph shall not exceed the taxpayer's net gain from the sale or other
39 disposition of all such property.

40 (6) For taxable years beginning after December thirty-first, nineteen
41 hundred eighty-one, except with respect to property which is a qualified
42 mass commuting vehicle described in subparagraph (D) of paragraph eight
43 of subsection (f) of section one hundred sixty-eight of the internal
44 revenue code, relating to qualified mass commuting vehicles, any amount
45 properly includible in federal gross income solely as a result of an
46 election made pursuant to the provisions of such paragraph eight as it
47 was in effect for agreements entered into prior to January first, nine-
48 teen hundred eighty-four.

49 (7) Upon the disposition of property to which subdivision (o) of
50 section 11-507 of this chapter applies, the amount, if any, by which the
51 aggregate of the amounts described in subdivision (n) of section 11-507
52 of this chapter attributable to such property exceeds the aggregate of
53 the amounts described in subdivision (o) of section 11-507 of this chap-
54 ter attributable to such property.

55 (8) Notwithstanding any other provision of this chapter to the contra-
56 ry, the amount of any income or gain, to the extent includible in gross

1 income for federal income tax purposes, realized from the holding, leas-
2 ing or managing of real property if, and to the extent that, such hold-
3 ing, leasing or managing of real property is not deemed an unincorporat-
4 ed business carried on by the taxpayer pursuant to the provisions of
5 subdivision (d) of section 11-502 of this chapter.

6 (9) Notwithstanding any other provision of this chapter to the contra-
7 ry, the amount of any income or gain, to the extent includible in gross
8 income for federal income tax purposes, including but not limited to,
9 dividends, interest, payments with respect to securities loans, income
10 from notional principal contracts, or income and gains, other than as a
11 dealer, from the holding, sale, disposition, assumption, offset or
12 termination of a position in, property, as defined in paragraph one of
13 subdivision (c) of section 11-502 of this chapter, or other substantial-
14 ly similar income from ordinary and routine trading or investment activ-
15 ity to the extent determined by the commissioner of finance, realized in
16 connection with activities described in paragraph two of subdivision (c)
17 of section 11-502 of this chapter if, and to the extent that, such
18 activities are not deemed an unincorporated business carried on by the
19 taxpayer pursuant to the provisions of subdivision (c) of section 11-502
20 of this chapter.

21 (10) Notwithstanding any other provision of this chapter to the
22 contrary, in the case of a taxpayer that is an unincorporated entity
23 described in subparagraph (B) of paragraph four of subdivision (c) of
24 section 11-502 of this chapter, the amount of any income or gain, to the
25 extent includible in gross income for federal income tax purposes, real-
26 ized from the sale or other disposition of an interest in another unin-
27 corporated entity if, and to the extent that, such income or gain is
28 attributable to activities of such other unincorporated entity not
29 deemed an unincorporated business carried on by the taxpayer pursuant to
30 the provisions of subdivision (c) of section 11-502 of this chapter.

31 (11) Notwithstanding any other provision of this chapter to the
32 contrary, the amount of any income or gain, to the extent includible in
33 gross income for federal income tax purposes, realized from the
34 provision by an owner, lessee or fiduciary holding, leasing or managing
35 real property of the service of parking, garaging or storing of motor
36 vehicles on a monthly or longer term basis to tenants at such real prop-
37 erty if, and to the extent that, the provision of such services to such
38 tenants is not deemed an unincorporated business pursuant to the
39 provisions of subdivision (d) of section 11-502 of this chapter.

40 (12) The amount of any grant received through either the COVID-19
41 pandemic small business recovery grant program, pursuant to section
42 sixteen-ff of the New York state urban development corporation act, or
43 the small business resilience grant program administered by the depart-
44 ment of small business services, to the extent the amount of either such
45 grant is included in federal taxable income.

46 (d) Upon the disposition of property to which subdivisions (t) and (u)
47 of section 11-507 of this chapter apply, the amount of any gain or loss
48 includible in entire net income shall be adjusted to reflect the modifi-
49 cations provided in such subdivisions attributable to such property.

50 (e) Related members expense add back. (1) Definitions. (A) Related
51 member. "Related member" means a related person as defined in subpara-
52 graph (c) of paragraph three of subsection (b) of section four hundred
53 sixty-five of the internal revenue code, except that "fifty percent"
54 shall be substituted for "ten percent".

55 (B) Effective rate of tax. "Effective rate of tax" means, as to any
56 city, the maximum statutory rate of tax imposed by the city on or meas-

1 ured by a related member's net income multiplied by the apportionment
2 percentage, if any, applicable to the related member under the laws of
3 said jurisdiction. For purposes of this definition, the effective rate
4 of tax as to any city is zero where the related member's net income tax
5 liability in said city is reported on a combined or consolidated return
6 including both the taxpayer and the related member where the reported
7 transactions between the taxpayer and the related member are eliminated
8 or offset. Also, for purposes of this definition, when computing the
9 effective rate of tax for a city in which a related member's net income
10 is eliminated or offset by a credit or similar adjustment that is
11 dependent upon the related member either maintaining or managing intan-
12 gible property or collecting interest income in such city, the maximum
13 statutory rate of tax imposed by such city shall be decreased to reflect
14 the statutory rate of tax that applies to the related member as effec-
15 tively reduced by such credit or similar adjustment.

16 (C) Royalty payments. Royalty payments are payments directly connected
17 to the acquisition, use, maintenance or management, ownership, sale,
18 exchange, or any other disposition of licenses, trademarks, copyrights,
19 trade names, trade dress, service marks, mask works, trade secrets,
20 patents and any other similar types of intangible assets as determined
21 by the commissioner of finance, and include amounts allowable as inter-
22 est deductions under section one hundred sixty-three of the internal
23 revenue code to the extent such amounts are directly or indirectly for,
24 related to or in connection with the acquisition, use, maintenance or
25 management, ownership, sale, exchange or disposition of such intangible
26 assets.

27 (D) Valid business purpose. A valid business purpose is one or more
28 business purposes, other than the avoidance or reduction of taxation,
29 which alone or in combination constitute the primary motivation for some
30 business activity or transaction, which activity or transaction changes
31 in a meaningful way, apart from tax effects, the economic position of
32 the taxpayer. The economic position of the taxpayer includes an increase
33 in the market share of the taxpayer, or the entry by the taxpayer into
34 new business markets.

35 (2) Royalty expense add backs. (A) For the purpose of computing unin-
36 corporated business entire net income, a taxpayer must add back royalty
37 payments directly or indirectly paid, accrued, or incurred in connection
38 with one or more direct or indirect transactions with one or more
39 related members during the taxable year to the extent deductible in
40 calculating federal taxable income.

41 (B) Exceptions. (i) The adjustment required in this subdivision shall
42 not apply to the portion of the royalty payment that the taxpayer estab-
43 lishes, by clear and convincing evidence of the type and in the form
44 specified by the commissioner of finance, meets all of the following
45 requirements: (I) the related member was subject to tax in this city or
46 another city within the United States or a foreign nation or some combi-
47 nation thereof on a tax base that included the royalty payment paid,
48 accrued or incurred by the taxpayer; (II) the related member during the
49 same taxable year directly or indirectly paid, accrued or incurred such
50 portion to a person that is not a related member; and (III) the trans-
51 action giving rise to the royalty payment between the taxpayer and the
52 related member was undertaken for a valid business purpose.

53 (ii) The adjustment required in this subdivision shall not apply if
54 the taxpayer establishes, by clear and convincing evidence of the type
55 and in the form specified by the commissioner of finance, that: (I) the
56 related member was subject to tax on or measured by its net income in

1 this city or another city within the United States, or some combination
2 thereof; (II) the tax base for said tax included the royalty payment
3 paid, accrued or incurred by the taxpayer; and (III) the aggregate
4 effective rate of tax applied to the related member in those jurisdic-
5 tions is no less than eighty percent of the statutory rate of tax that
6 applied to the taxpayer under section 11-503 of this chapter for the
7 taxable year.

8 (iii) The adjustment required in this subdivision shall not apply if
9 the taxpayer establishes, by clear and convincing evidence of the type
10 and in the form specified by the commissioner of finance, that: (I) the
11 royalty payment was paid, accrued or incurred to a related member organ-
12 ized under the laws of a country other than the United States; (II) the
13 related member's income from the transaction was subject to a comprehen-
14 sive income tax treaty between such country and the United States; (III)
15 the related member was subject to tax in a foreign nation on a tax base
16 that included the royalty payment paid, accrued or incurred by the
17 taxpayer; (IV) the related member's income from the transaction was
18 taxed in such country at an effective rate of tax at least equal to that
19 imposed by this city; and (V) the royalty payment was paid, accrued or
20 incurred pursuant to a transaction that was undertaken for a valid busi-
21 ness purpose and using terms that reflect an arm's length relationship.

22 (iv) The adjustment required in this subdivision shall not apply if
23 the taxpayer and the commissioner of finance agree in writing to the
24 application or use of alternative adjustments or computations. The
25 commissioner of finance may, in his or her discretion, agree to the
26 application or use of alternative adjustments or computations when he or
27 she concludes that in the absence of such agreement the income of the
28 taxpayer would not be properly reflected.

29 (f) Upon the disposition of property to which subdivisions (w) and (x)
30 of section 11-507 of this chapter apply, the amount of any gain or loss
31 includible in unincorporated business gross income shall be adjusted to
32 reflect the modifications provided in such subdivisions attributable to
33 such property.

34 § 11-507 Unincorporated business deductions. The unincorporated busi-
35 ness deductions of an unincorporated business means the items of loss
36 and deduction directly connected with or incurred in the conduct of the
37 business, which are allowable for federal income tax purposes for the
38 taxable year, including losses and deductions connected with any proper-
39 ty employed in the business, with the following modifications:

40 (a) A deduction shall be allowed for charitable contributions of the
41 unincorporated business, to the extent that such contributions would be
42 deductible for federal income tax purposes if made by a corporation, but
43 not in excess of five per centum of the amount by which the unincorpo-
44 rated business gross income exceeds the sum of (A) the unincorporated
45 business deductions computed without the benefit of any deduction for
46 charitable contributions and (B) the deduction allowed under subdivision
47 (b) of section 11-509 of this chapter, where the election permitted by
48 such subdivision has been exercised.

49 (b) (1) A deduction shall be allowed for net operating losses incurred
50 by the unincorporated business, except as otherwise provided by para-
51 graph two of this subdivision, in an amount computed in the same manner
52 as the net operating loss deduction which would be allowed for the taxa-
53 ble year for federal income tax purposes if the unincorporated business
54 were an individual taxpayer, but determined solely by reference to the
55 unincorporated business gross income and unincorporated business
56 deductions, allocated to the city, of the unincorporated business;

1 provided, however, that such net operating loss deduction which would be
2 allowed for the taxable year for federal income tax purposes shall for
3 purposes of this paragraph be determined as if the unincorporated busi-
4 ness had elected under section one hundred seventy-two of the internal
5 revenue code to relinquish the entire carryback period with respect to
6 net operating losses, except with respect to the first ten thousand
7 dollars of each of such losses, sustained during taxable years ending
8 after June thirtieth, nineteen hundred eighty-nine. Such deduction shall
9 not include any net operating loss sustained during any taxable year
10 beginning prior to January first, nineteen hundred sixty-six and for the
11 purposes of this paragraph a net operating loss shall be determined
12 without regard to any deductions allowed pursuant to subdivision (b) of
13 section 11-509 of this chapter and any net operating loss for a taxable
14 year beginning in nineteen hundred eighty-one shall be computed without
15 regard to the deduction allowed with respect to recovery property under
16 section one hundred sixty-eight of the internal revenue code; in lieu of
17 such deduction, a taxpayer shall be allowed for such taxable year with
18 respect to such property the depreciation deduction allowable under
19 section one hundred sixty-seven of such internal revenue code as such
20 section was in full force and effect on December thirty-first, nineteen
21 hundred eighty.

22 (2) In the case of a partnership, no net operating loss carryback or
23 carryover to any taxable year shall be allowed unless one or more of the
24 partners during such taxable year were persons having a proportionate
25 interest or interests, amounting to at least eighty percent of all such
26 interests, in the unincorporated business gross income and unincorporat-
27 ed business deductions of the partnership which sustained the loss for
28 which a carryback or carryover is claimed. In such event, the carryback
29 or carryover allowable on account of such loss shall not exceed the
30 percentage of the amount otherwise allowable, determined by dividing (A)
31 the sum of the proportionate interests in the unincorporated business
32 gross income and unincorporated business deductions of the partnership,
33 for the year to which the loss is carried back or carried over, attrib-
34 utable to such partners, by (B) the sum of such proportionate interests
35 owned by all partners for such taxable year. The amount by which the
36 carryback or carryover otherwise allowable exceeds the amount allowable
37 pursuant to the preceding sentence shall not be a carryback or carryover
38 to any other taxable year.

39 (3) Notwithstanding any other provision of this chapter to the contra-
40 ry, for taxable years beginning before January first, two thousand twen-
41 ty-one, any amendment to section one hundred seventy-two of the internal
42 revenue code made after March first, two thousand twenty shall not apply
43 to this chapter.

44 (c) No deduction shall be allowed, except as provided in section
45 11-509 of this chapter for amounts paid or incurred to a proprietor or
46 partner for services or for use of capital.

47 (d) No deduction shall be allowed for income taxes imposed by the
48 city, this state or any other taxing jurisdiction, or the tax imposed by
49 article thirteen-A of the tax law.

50 (e) No deduction shall be allowed for (A) interest on indebtedness
51 incurred or continued to purchase or carry obligations or securities the
52 interest on which is exempt from tax under this chapter; (B) expenses
53 paid or incurred for the production or collection of such income or the
54 management, conservation or maintenance of property held for the
55 production of such income; or (C) the amortizable bond premium on any
56 bond the interest income from which is so exempt.

1 (f) No deduction shall be allowed in respect of the excess of net
2 long-term capital gain over net short-term capital loss, but capital
3 losses incurred in the unincorporated business shall be treated as ordi-
4 nary losses and shall be allowed in full.

5 (g) In the case of a taxpayer who has exercised the election permitted
6 by subdivision (b) of section 11-509 of this chapter, no deduction shall
7 be allowed for expenditures with reference to the property to which such
8 election relates, or for depreciation of such property, except as
9 permitted by said subdivision.

10 (h) A deduction shall be allowed, to the extent not allowable for
11 federal income tax purposes, for (A) interest on indebtedness incurred
12 or continued to purchase or carry obligations or securities the interest
13 on which is subject to tax under this chapter but exempt from federal
14 income tax; (B) ordinary and necessary expenses paid or incurred during
15 the taxable year for the production or collection of such income or the
16 management, conservation or maintenance of property held for the
17 production of such income; and (C) the amortizable bond premium for the
18 taxable year on any bond the interest on which is subject to tax under
19 this chapter but exempt from federal income tax.

20 (i) At the election of the taxpayer, a deduction shall be allowed for
21 expenditures paid or incurred during the taxable year for the
22 construction, reconstruction, erection or improvement of industrial
23 waste treatment facilities and air pollution control facilities.

24 (1) (A) The term "industrial waste treatment facilities" shall mean
25 facilities for the treatment, neutralization or stabilization of indus-
26 trial waste, as the term "industrial waste" is defined in section
27 17-0105 of the environmental conservation law, from a point immediately
28 preceding the point of such treatment, neutralization or stabilization
29 to the point of disposal, including the necessary pumping and transmit-
30 ting facilities, but excluding such facilities installed for the primary
31 purpose of salvaging materials which are usable in the manufacturing
32 process or are marketable.

33 (B) The term "air pollution control facilities" shall mean facilities
34 which remove, reduce, or render less noxious air contaminants emitted
35 from an air contamination source, as the terms "air contaminant" and
36 "air contamination source" are defined in section 19-0107 of the envi-
37 ronmental conservation law, from a point immediately preceding the point
38 of such removal, reduction or rendering to the point of discharge of
39 air, meeting emission standards as established by the air pollution
40 control board, but excluding such facilities installed for the primary
41 purpose of salvaging materials which are usable in the manufacturing
42 process or are marketable and excluding those facilities which rely for
43 their efficacy on dilution, dispersion or assimilation of air contam-
44 inants in the ambient air after emission.

45 (2) However, such deduction shall be allowed only (A) with respect to
46 tangible property which is depreciable, pursuant to section one hundred
47 sixty-seven of the internal revenue code, having a situs in the city and
48 used in the taxpayer's trade or business, the construction, recon-
49 struction, erection or improvement of which, in the case of industrial
50 waste treatment facilities, is initiated on or after January first,
51 nineteen hundred sixty-six, and only for expenditures paid or incurred
52 prior to January first, nineteen hundred seventy-two, or which, in the
53 case of air pollution control facilities, is initiated on or after Janu-
54 ary first, nineteen hundred sixty-six, and

55 (B) on condition that such facilities have been certified by the state
56 commissioner of environmental conservation or his or her designated

1 representative, in the same manner as provided in either section 17-0707
2 or 19-0309 of the environmental conservation law, as applicable, as
3 complying with the provision of the environmental conservation law, the
4 sanitary code and regulations, permits or orders promulgated pursuant
5 thereto, and

6 (C) on condition that for the taxable year and all succeeding taxable
7 years, no deduction for such expenditures or for depreciation of the
8 same property allowed for federal income tax purposes shall be allowed
9 under this chapter, except to the extent that the basis of the property
10 may be attributable to factors other than such expenditures, or in case
11 a deduction is allowable pursuant to this subdivision, for only a part
12 of such expenditures, on condition that any deduction allowed for feder-
13 al income tax purposes for such expenditures or for depreciation of the
14 same property be proportionately reduced in computing unincorporated
15 business deductions for the taxable year and all succeeding taxable
16 years, and

17 (D) where the election provided for in subdivision (b) of section
18 11-509 of this chapter has not been exercised in respect to the same
19 property.

20 (3) (A) If expenditures in respect to an industrial waste treatment
21 facility or an air pollution control facility have been deducted as
22 provided herein and if within ten years from the end of the taxable year
23 in which such deduction was allowed such property or any part thereof is
24 used for the primary purpose of salvaging materials which are usable in
25 the manufacturing process or are marketable, the taxpayer shall report
26 such change of use in its return for the first taxable year during which
27 it occurs, and the commissioner of finance may recompute the tax for the
28 year or years for which such deduction was allowed and any carryback or
29 carryover year, and may assess any additional tax resulting from such
30 recomputation within the time fixed by paragraph eight of subdivision
31 (c) of section 11-523 of this chapter.

32 (B) If a deduction is allowed as herein provided for expenditures paid
33 or incurred during any taxable year on the basis of a temporary certif-
34 icate of compliance issued pursuant to the public health law, and if the
35 taxpayer fails to obtain a permanent certificate of compliance upon
36 completion of the facilities with respect to which such temporary
37 certificate was issued, the taxpayer shall report such failure in its
38 report for the taxable year during which such facilities are completed,
39 and the commissioner of finance may recompute the tax for the year or
40 years for which such deduction was allowed and any carryback or carry-
41 over year, and may assess any additional tax resulting from such recom-
42 putation within the time fixed by paragraph eight of subdivision (c) of
43 section 11-523 of this chapter.

44 (4) In any taxable year when property is sold or otherwise disposed
45 of, with respect to which a deduction has been allowed pursuant to this
46 subdivision, such deduction shall be disregarded in computing gain or
47 loss, and the gain or loss on the sale or other disposition of such
48 property shall be the gain or loss allowable for federal income tax
49 purposes for such taxable year.

50 (j) In the case of mines, oil and gas wells and other natural depos-
51 its, no deduction of any allowance for percentage depletion pursuant to
52 section six hundred thirteen or section six hundred thirteen A of the
53 internal revenue code of nineteen hundred fifty-four, as amended, shall
54 be allowed. However, an allowance for depletion with respect to such
55 property shall be deductible in the amount which would be allowable
56 under section six hundred eleven of such internal revenue code if such

1 deduction were computed without reference to such section six hundred
2 thirteen or section six hundred thirteen A of such code. With respect to
3 the computation of depletion pursuant to this section, the basis for
4 such computation for taxable years beginning in nineteen hundred seven-
5 ty-two shall be the federal basis. For subsequent taxable years, the
6 basis of such computation shall be reduced only by the deduction for the
7 allowance for depletion deductible pursuant to this section. In any
8 taxable year when any such property is sold or otherwise disposed of,
9 with respect to which a deduction has been allowed pursuant to this
10 subdivision, the gain or loss thereon entering into the computation of
11 federal taxable income shall be disregarded in computing unincorporated
12 business taxable income and there shall be added to or subtracted from
13 federal gross income, so modified, the gain or loss upon such sale or
14 other disposition. In computing such gain or loss, the basis of the
15 property sold or disposed of shall be adjusted to reflect the deduction
16 allowed with respect to such property pursuant to this subdivision.

17 (k) A deduction shall be allowed for that portion of wages and sala-
18 ries paid or incurred for the taxable year for which a deduction is not
19 allowed pursuant to the provisions of section two hundred eighty-C of
20 the internal revenue code.

21 (l) For taxable years beginning after December thirty-first, nineteen
22 hundred eighty-one, except with respect to property which is a qualified
23 mass commuting vehicle described in subparagraph (D) of paragraph eight
24 of subsection (f) of section one hundred sixty-eight of the internal
25 revenue code, relating to qualified mass commuting vehicles, a deduction
26 shall be allowed for any amount which the taxpayer could have excluded
27 for purposes of this chapter had it not made the election provided for
28 in such paragraph eight as it was in effect for agreements entered into
29 prior to January first, nineteen hundred eighty-four.

30 (m) For taxable years beginning after December thirty-first, nineteen
31 hundred eighty-one, except with respect to property which is a qualified
32 mass commuting vehicle described in subparagraph (D) of paragraph eight
33 of subsection (f) of section one hundred sixty-eight of the internal
34 revenue code, relating to qualified mass commuting vehicles, no
35 deduction shall be allowed for any amount deductible for federal income
36 tax purposes solely as a result of an election made pursuant to the
37 provisions of such paragraph eight as it was in effect for agreements
38 entered into prior to January first, nineteen hundred eighty-four.

39 (n) In the case of property placed in service in taxable years begin-
40 ning before nineteen hundred ninety-four, for taxable years beginning
41 after December thirty-first, nineteen hundred eighty-one, except with
42 respect to property subject to the provisions of section two hundred
43 eighty-F of the internal revenue code and property subject to the
44 provisions of section one hundred sixty-eight of the internal revenue
45 code which is placed in service in this state in taxable years beginning
46 after December thirty-first, nineteen hundred eighty-four, no deduction
47 shall be allowed for the amount allowable as a deduction determined
48 under section one hundred sixty-eight of the internal revenue code.

49 (o) In the case of property placed in service in taxable years begin-
50 ning before nineteen hundred ninety-four, for taxable years beginning
51 after December thirty-first, nineteen hundred eighty-one, except with
52 respect to property subject to the provisions of section two hundred
53 eighty-F of the internal revenue code and property subject to the
54 provisions of section one hundred sixty-eight of the internal revenue
55 code which is placed in service in this state in taxable years beginning
56 after December thirty-first, nineteen hundred eighty-four, and provided

1 a deduction has not been disallowed pursuant to subdivision (m) of this
2 section, a taxpayer shall be allowed with respect to property which is
3 subject to the provisions of section one hundred sixty-eight of the
4 internal revenue code the depreciation deduction allowable under section
5 one hundred sixty-seven of the internal revenue code as such section
6 would have applied to property placed in service on December thirty-
7 first, nineteen hundred eighty.

8 (p) Notwithstanding any other provision of this chapter to the contra-
9 ry, no deduction shall be allowed for interest, depreciation or any
10 other expense directly or indirectly attributable to the holding, leas-
11 ing or managing of real property or to income or gain therefrom if, and
12 to the extent that, such holding, leasing or managing of real property
13 is not deemed an unincorporated business carried on by the taxpayer
14 pursuant to the provisions of subdivision (d) of section 11-502 of this
15 chapter.

16 (q) Notwithstanding any other provision of this chapter to the contra-
17 ry, no deduction shall be allowed for any expenses directly or indirect-
18 ly attributable to activities described in paragraph two of subdivision
19 (c) of section 11-502 of this chapter if, and to the extent that, such
20 activities are not deemed an unincorporated business carried on by the
21 taxpayer pursuant to the provisions of subdivision (c) of section 11-502
22 of this chapter.

23 (r) Notwithstanding any other provision of this chapter to the contra-
24 ry, in the case of a taxpayer that is an unincorporated entity described
25 in subparagraph (B) of paragraph four of subdivision (c) of section
26 11-502 of this chapter, no deduction shall be allowed for any losses or
27 expenses directly or indirectly attributable to the sale or other dispo-
28 sition of an interest in another unincorporated entity if, and to the
29 extent that, such losses or expenses are attributable to activities of
30 such other unincorporated entity not deemed an unincorporated business
31 carried on by the taxpayer pursuant to the provisions of subdivision (c)
32 of section 11-502 of this chapter.

33 (s) Notwithstanding any other provision of this chapter to the contra-
34 ry, no deduction shall be allowed for interest, depreciation or any
35 other expense directly or indirectly attributable to the provision by an
36 owner, lessee or fiduciary holding, leasing or managing the real property of
37 the service of parking, garaging or storing of motor vehicles on a
38 monthly or longer term basis to tenants at such real property if, and to
39 the extent that, the provision of such services to such tenants is not
40 deemed an unincorporated business pursuant to the provisions of subdivi-
41 sion (d) of section 11-502 of this chapter.

42 (t) For taxable years ending after September tenth, two thousand one,
43 in the case of qualified property described in paragraph two of
44 subsection k of section one hundred sixty-eight of the internal revenue
45 code, other than qualified New York Liberty Zone property described in
46 paragraph two of subsection b of section fourteen hundred L of the
47 internal revenue code, without regard to clause (i) of subparagraph (C)
48 of such paragraph, no deduction shall be allowed for the amount allow-
49 able as a deduction under section one hundred sixty-seven of the inter-
50 nal revenue code.

51 (u) For taxable years ending after September tenth, two thousand one,
52 in the case of qualified property described in paragraph two of
53 subsection k of section one hundred sixty-eight of the internal revenue
54 code other than qualified New York Liberty Zone property described in
55 paragraph two of subsection b of section fourteen hundred L of the
56 internal revenue code, without regard to clause (i) of subparagraph (C)

1 of such paragraph, a deduction shall be allowed with respect to such
2 property equal to the depreciation deduction allowable under section one
3 hundred sixty-seven of the internal revenue code as such section would
4 have applied to such property had it been acquired by the taxpayer on
5 September tenth, two thousand one, provided, however, that for taxable
6 years beginning on or after January first, two thousand four, in the
7 case of a passenger motor vehicle or a sport utility vehicle subject to
8 the provisions of subdivision (w) of this section, the limitation under
9 clause (i) of subparagraph (A) of paragraph one of subdivision (a) of
10 section two hundred eighty-F of the internal revenue code applicable to
11 the amount allowed as a deduction under this paragraph shall be deter-
12 mined as of the date such vehicle was placed in service and not as of
13 September tenth, two thousand one.

14 (v) For taxable years beginning on or after January first, two thou-
15 sand four, in the case of a taxpayer that is not an eligible farmer as
16 defined in subsection (n) of section six hundred six of the tax law, no
17 deduction shall be allowed for the amounts allowable as a deduction
18 under sections one hundred seventy-nine, one hundred sixty-seven and one
19 hundred sixty-eight of the internal revenue code with respect to a sport
20 utility vehicle that is not a passenger automobile as defined in para-
21 graph five of subsection (d) of section two hundred eighty-F of the
22 internal revenue code.

23 (w) For taxable years beginning on or after January first, two thou-
24 sand four, in the case of a taxpayer that is not an eligible farmer as
25 defined in subsection (n) of section six hundred six of the tax law, a
26 deduction shall be allowed with respect to a sport utility vehicle that
27 is not a passenger automobile as defined in paragraph five of subsection
28 (d) of section two hundred eighty-F of the internal revenue code equal
29 to the amounts allowable as a deduction under sections one hundred
30 seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the
31 internal revenue code, determined as if such sport utility vehicle were
32 a passenger automobile as defined in such paragraph five.

33 § 11-508 Allocation to the city. (a) General; allocation of business
34 income. If an unincorporated business is carried on both within and
35 without the city, as determined under regulations of the commissioner of
36 finance, there shall be allocated to the city, in the manner provided in
37 subdivision (b), (c) or (d) of this section, a fair and equitable
38 portion of its business income. For taxable years beginning before July
39 first, nineteen hundred ninety-six, if the unincorporated business has
40 no regular place of business outside the city, all of such business
41 income shall be allocated to the city.

42 (b) (1) Allocation by taxpayer's books. For taxable years beginning
43 before January first, two thousand five, the portion allocable to the
44 city may be determined from the books of the business if the methods
45 used in keeping such books are approved by the commissioner of finance
46 as fairly and equitably reflecting the income from the city.

47 (2)(i) If a taxpayer determines the portion of business income to be
48 allocated to the city using the method prescribed in paragraph one of
49 this subdivision on a timely filed original return with respect to each
50 of the two taxable years, each of which must consist of twelve months,
51 immediately preceding the taxpayer's first taxable year beginning on or
52 after January first, two thousand five, the taxpayer may make a one-time
53 election to continue to use that method for taxable years beginning on
54 or after January first, two thousand five and before January first, two
55 thousand twelve. Such election shall be made by using the method
56 prescribed in paragraph one of this subdivision on an original timely

1 filed return with respect to the first taxable year beginning on or
2 after January first, two thousand five and before January first, two
3 thousand six. Such election may not be made, or if made, shall be deemed
4 revoked as of the beginning of the taxable year if, for either of the
5 two taxable years immediately preceding the year in which the election
6 is made, the commissioner of finance has determined the methods used in
7 keeping such books do not fairly and equitably reflect the income from
8 the city.

9 (ii) (A) A taxpayer that has made the election provided for in subpar-
10 agraph (i) of this paragraph may revoke it by filing an original or
11 amended return using an allocation method permitted by this section
12 other than the method prescribed in paragraph one of this subdivision
13 unless the commissioner of finance has determined that such method does
14 not fairly and equitably reflect the income from the city.

15 (B) The election provided for in subparagraph (i) of this paragraph
16 shall be deemed to have been revoked as of the beginning of the taxable
17 year if, for any taxable year during which the election is intended to
18 be in effect, the commissioner of finance has determined that the meth-
19 ods used in keeping the taxpayer's books do not fairly and equitably
20 reflect the income from the city.

21 (C) In the case of a taxpayer that is a partnership or other unincor-
22 porated entity, the election provided for in subparagraph (i) of this
23 paragraph shall be deemed to have been revoked as of the beginning of
24 the taxable year unless one or more of the persons having a propor-
25 tionate interest or interests, amounting to more than fifty percent of
26 all such interests, in the taxpayer's unincorporated business gross
27 income and unincorporated business deductions for such taxable year were
28 persons having a proportionate interest or interests, amounting to more
29 than fifty percent of all such interests, in the taxpayer's unincorpo-
30 rated business gross income and unincorporated business deductions at
31 the end of the taxpayer's last taxable year beginning before January
32 first, two thousand five. For purposes of this clause, a transfer of an
33 ownership interest in unincorporated business gross income or unincorpo-
34 rated business deductions upon the death of a partner or owner to such
35 deceased partner's or owner's estate shall be disregarded but transfers
36 by such decedent's estate shall not be disregarded.

37 (D) Once the election provided for in subparagraph (i) of this para-
38 graph has been revoked by the taxpayer pursuant to clause (A) or deemed
39 revoked pursuant to clauses (B) or (C) of this subparagraph, the taxpay-
40 er shall be barred from using the method prescribed in paragraph one of
41 this subdivision for the taxable year in which the election has been
42 revoked or deemed revoked and any subsequent taxable year.

43 (c) Allocation by formula. If subdivision (b) does not apply to the
44 taxpayer, the portion allocable to the city shall be determined by
45 multiplying (A) the business income by (B) a business allocation
46 percentage to be determined by adding together the percentages computed
47 under paragraphs one, two and three of this subdivision, and dividing
48 the result by the number of percentages; provided, however, that for
49 taxable years beginning on or after July first, nineteen hundred nine-
50 ty-six, a taxpayer that is a "manufacturing business," as defined in
51 subdivision (g) of this section, may determine its business allocation
52 percentage as provided in such subdivision (g):

53 (1) Property percentage. The percentage computed by dividing (A) the
54 average of the value, at the beginning and end of the taxable year, of
55 real and tangible personal property connected with the unincorporated
56 business and located within the city, by (B) the average of the value,

1 at the beginning and end of the taxable year, of all real and tangible
2 personal property connected with the unincorporated business and located
3 both within and without the city. For this purpose, for taxable years
4 beginning before January first, two thousand five, real property shall
5 include real property rented to the unincorporated business and, for
6 this purpose, for taxable years beginning on and after January first,
7 two thousand five, real and tangible personal property shall include
8 real and tangible personal property rented to the unincorporated busi-
9 ness and the value of such real and tangible personal property rented to
10 the unincorporated business shall mean the product of (i) eight and (ii)
11 the gross rents payable for the rental of such property during the taxa-
12 ble year.

13 (2) Payroll percentage. The percentage computed by dividing (A) the
14 total wages, salaries and other personal service compensation paid or
15 incurred during the taxable year to employees in connection with the
16 unincorporated business carried on within the city, by (B) the total of
17 all wages, salaries and other personal service compensation paid or
18 incurred during the taxable year to employees in connection with the
19 unincorporated business carried on both within and without the city.

20 (3) Gross income percentage. The percentage computed by dividing (A)
21 the gross sales or charges for services performed by or through an agen-
22 cy located within the city, by (B) the total of all gross sales or
23 charges for services performed within and without the city. The sales or
24 charges to be allocated to the city shall include all sales negotiated
25 or consummated, and charges for services performed, by an employee,
26 agent, agency or independent contractor chiefly situated at, connected
27 by contract or otherwise with, or sent out from, offices of the unincor-
28 porated business, or other agencies, situated within the city; provided,
29 however, that for taxable years beginning on or after July first, nine-
30 teen hundred ninety-six, sales of tangible personal property shall not
31 be allocated to the city as provided in this paragraph, but shall be
32 allocated to the city only where shipments are made to points within the
33 city, and provided, further, that:

34 (A) for taxable years beginning on or after July first, two thousand
35 five, for taxpayers having gross receipts for the taxable year, deter-
36 mined without regard to any deductions, of less than one hundred thou-
37 sand dollars, charges for services performed shall be allocated to the
38 city to the extent that the services are performed within the city;

39 (B) for taxable years beginning on or after July first, two thousand
40 six, for taxpayers having gross receipts for the taxable year, deter-
41 mined without regard to any deductions, of less than three hundred thou-
42 sand dollars, charges for services performed shall be allocated to the
43 city to the extent that the services are performed within the city; and

44 (C) for taxable years beginning on or after July first, two thousand
45 seven, for all other taxpayers, charges for services performed shall be
46 allocated to the city to the extent that the services are performed
47 within the city.

48 (d) Other allocation methods. The portion allocable to the city shall
49 be determined in accordance with rules and regulations of the commis-
50 sioner of finance if it shall appear to the commissioner of finance that
51 the income from the city is not fairly and equitably reflected under the
52 provisions of either subdivision (b) or subdivision (c) of this section.

53 (e) Special rules for real estate. Income and deductions from the
54 rental of real property, and gain and loss from the sale, exchange or
55 other disposition of real property, shall not be subject to allocation
56 under subdivision (b), (c), or (d) of this section, but shall be consid-

1 ered as entirely derived from or connected with the state, other than
2 this state, in which such property is located or, if such property is
3 located in this state, the political subdivision thereof. To the extent
4 that anything in this subdivision is inconsistent with any provision of
5 subdivision (d) of section 11-502, subdivision (c) of section 11-506 or
6 subdivision (p) of section 11-507 of this chapter, the provisions of
7 such subdivisions shall take precedence over the provisions of this
8 subdivision.

9 (e-1) Special rules for publishers and broadcasters. (1) Notwithstand-
10 ing anything in paragraph three of subdivision (c) of this section to
11 the contrary and except as provided in paragraph four of this subdivi-
12 sion, in the case of a taxpayer engaged in the business of publishing
13 newspapers or periodicals, there shall be allocated to the city, for
14 purposes of such paragraph three, the gross sales or charges for
15 services arising from sales of subscriptions to, and advertising
16 contained in, such newspapers or periodicals, to the extent that such
17 newspapers or periodicals are delivered to points within the city.

18 (2) Notwithstanding anything in paragraph three of subdivision (c) of
19 this section to the contrary and except as provided in paragraph four of
20 this subdivision, in the case of a taxpayer engaged in the business of
21 broadcasting radio or television programs, whether through the public
22 airwaves or by cable, direct or indirect satellite transmission, or any
23 other means of transmission, there shall be allocated to the city, for
24 purposes of such paragraph three, a portion of the gross sales or charg-
25 es for services arising from the sale of subscriptions to such programs
26 or from the broadcasting of such programs and of commercial messages in
27 connection therewith, such portion to be determined according to the
28 number of listeners or viewers within and without the city.

29 (3) Notwithstanding anything in this section, other than subdivision
30 (e) of this section, to the contrary, in the case of a taxpayer that is
31 substantially engaged, in the aggregate, in any combination of the busi-
32 nesses referred to in paragraphs one, two and four of this subdivision,
33 the portion of business income allocable to the city shall be determined
34 in accordance with the provisions of subdivision (c) of this section, as
35 modified by paragraphs one, two and four of this subdivision, unless the
36 commissioner of finance determines that the business income from the
37 city is not fairly and equitably reflected under the provisions of such
38 subdivision (c), in which event the provisions of subdivision (d) of
39 this section shall apply in determining the portion of business income
40 allocable to the city and the provisions of subdivision (b) of this
41 section shall not apply. For purposes of this subdivision, a taxpayer
42 shall be deemed to be substantially engaged in a business or businesses
43 referred to in such paragraphs one and two if more than ten percent of
44 the taxpayer's gross receipts for the taxable year are attributable to
45 such business or businesses.

46 (4) Notwithstanding anything in paragraph one or two of this subdivi-
47 sion to the contrary, for taxable years beginning on or after January
48 first, two thousand two, in the case of a taxpayer engaged in the busi-
49 ness of publishing newspapers or periodicals, or broadcasting radio or
50 television programs, whether through the public airwaves or by cable,
51 direct or indirect satellite transmission, or any other means of trans-
52 mission, there shall be allocated to the city, for purposes of paragraph
53 three of subdivision (c) of this section, the gross sales or charges to
54 subscribers located in the city for subscriptions to such newspapers,
55 periodicals, or program services. For purposes of this paragraph, a
56 subscriber shall be deemed located in the city if, in the case of news-

1 papers and periodicals, the mailing address for the subscription is
2 within the city and, in the case of program services, the billing
3 address for the subscription is within the city. For purposes of this
4 clause, "subscriber" shall mean a member of the general public who
5 receives such newspapers, periodicals or program services and does not
6 further distribute them.

7 (e-2) Rules for receipts from certain services to investment compa-
8 nies. (1) For taxable years beginning on or after January first, two
9 thousand one, for purposes of paragraph three of subdivision (c) of this
10 section, the portion of receipts received from an investment company
11 arising from the sale of management, administration or distribution
12 services to such investment company determined in accordance with para-
13 graph two of this subdivision shall be deemed to arise from services
14 performed within the city, such portion referred to herein as the Staten
15 Island city portion.

16 (2) The Staten Island city portion shall be the product of the total
17 of such receipts from the sale of such services and a fraction. The
18 numerator of that fraction is the sum of the monthly percentages, as
19 defined hereinafter, determined for each month of the investment compa-
20 ny's taxable year for federal income tax purposes which taxable year
21 ends within the taxable year of the taxpayer, but excluding any month
22 during which the investment company had no outstanding shares. The
23 monthly percentage for each such month is determined by dividing the
24 number of shares in the investment company which are owned on the last
25 day of the month by shareholders that are domiciled in the city by the
26 total number of shares in the investment company outstanding on that
27 date. The denominator of the fraction is the number of such monthly
28 percentages.

29 (3)(A) For purposes of this subdivision the term "domicile", in the
30 case of an individual shall have the meaning ascribed to it under chap-
31 ter seventeen of this title; an estate or trust is domiciled in the city
32 if it is a city resident estate or trust as defined in paragraph three
33 of subdivision (b) of section 11-1705 of the code of the proceeding
34 municipality; a business entity is domiciled in the city if the location
35 of the actual seat of management or control is in the city. It shall be
36 presumed that the domicile of a shareholder, with respect to any month,
37 is his, her or its mailing address on the records of the investment
38 company as of the last day of such month.

39 (B) For purposes of this subdivision, the term "investment company"
40 means a regulated investment company, as defined in section eight
41 hundred fifty-one of the internal revenue code, and a partnership to
42 which subdivision (a) of section seven thousand seven hundred four of
43 the internal revenue code applies, by virtue of paragraph three of
44 subdivision (c) of section seven thousand seven hundred four of such
45 code, and that meets the requirements of subdivision (b) of section
46 eight hundred fifty-one of such code. The provisions of this subpara-
47 graph shall be applied to the taxable year for federal income tax
48 purposes of the business entity that is asserted to constitute an
49 investment company that ends within the taxable year of the taxpayer.

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

54 (D) For purposes of this subdivision, the term "management services"
55 means the rendering of investment advice to an investment company,
56 making determinations as to when sales and purchases of securities are

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

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

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

25 (e-3) Rules for receipts for services performed by registered securi-
26 ties or commodities brokers or dealers. (1) For taxable years beginning
27 after two thousand eight, in the case of a taxpayer which is a regis-
28 tered securities or commodities broker or dealer, for purposes of para-
29 graph three of subdivision (c) of this section, the receipts specified
30 in subparagraphs (A) through (G) of this paragraph shall be deemed to
31 arise from services performed within the city to the extent set forth in
32 such subparagraphs.

33 (A) Receipts constituting brokerage commissions derived from the
34 execution of securities or commodities purchase or sales orders for the
35 accounts of customers shall be deemed to arise from services performed
36 at the mailing address in the records of the taxpayer of the customer
37 who is responsible for paying such commissions.

38 (B) Receipts constituting margin interest earned on behalf of broker-
39 age accounts shall be deemed to arise from services performed at the
40 mailing address in the records of the taxpayer of the customer who is
41 responsible for paying such margin interest.

42 (C) Gross income, including any accrued interest or dividends, from
43 principal transactions for the purchase or sale of stocks, bonds,
44 foreign exchange and other securities or commodities, including futures
45 and forward contracts, options and other types of securities or commod-
46 ities derivatives contracts, shall be deemed to arise from services
47 performed within the city either (i) to the extent that production cred-
48 its are awarded to branches, offices or employees of the taxpayer within
49 the city as a result of such principal transactions or (ii) if the
50 taxpayer so elects, to the extent that the gross proceeds from such
51 principal transactions, determined without deduction for any cost
52 incurred by the taxpayer to acquire the securities or commodities, are
53 generated from sales of securities or commodities to customers within
54 the city based upon the mailing addresses of such customers in the
55 records of the taxpayer. For purposes of clause (ii) of this subpara-
56 graph, the taxpayer shall separately calculate such gross income from

1 principal transactions by type of security or commodity. For purposes of
2 this subparagraph, gross income from principal transactions shall be
3 determined after the deduction of any cost incurred by the taxpayer to
4 acquire the securities or commodities. For purposes of this subdivision,
5 the term "production credits" means credits granted pursuant to the
6 internal accounting system used by the taxpayer to measure the amount of
7 revenue that should be awarded to a particular branch or office or
8 employee of the taxpayer which is based, at least in part, on the
9 branch's, the office's or the employee's particular activities. Upon
10 request, the taxpayer shall be required to furnish a detailed explana-
11 tion of such internal accounting system to the department.

12 (D) (i) Receipts constituting fees earned by the taxpayer for advisory
13 services to a customer in connection with the underwriting of securities
14 for such customer, such customer being the entity which is contemplating
15 issuing or is issuing securities, or fees earned by the taxpayer for
16 managing an underwriting shall be deemed to arise from services
17 performed at the mailing address in the records of the taxpayer of such
18 customer who is responsible for paying such fees.

19 (ii) Receipts constituting the primary spread or selling concession
20 from underwritten securities shall be deemed to arise from services
21 performed within the city to the extent that production credits are
22 awarded to branches, offices or employees of the taxpayer within the
23 city as a result of the sale of the underwritten securities.

24 (iii) The term "primary spread" means the difference between the price
25 paid by the taxpayer to the issuer of the securities being marketed and
26 the price received from the subsequent sale of the underwritten securi-
27 ties at the initial public offering price, less any selling concession
28 and any fees paid to the taxpayer for advisory services or any manager's
29 fees, if such fees are not paid by the customer to the taxpayer sepa-
30 rately. The term "public offering price" means the price agreed upon by
31 the taxpayer and the issuer at which the securities are to be offered to
32 the public. The term "selling concession" means the amount paid to the
33 taxpayer for participating in the underwriting of a security where the
34 taxpayer is not the lead underwriter.

35 (E) Receipts constituting interest earned by the taxpayer on loans and
36 advances made by the taxpayer to an entity affiliated with the taxpayer
37 shall be deemed to arise from services performed at the principal place
38 of business of such affiliated entity. For purposes of this subpara-
39 graph, an entity shall be considered affiliated with the taxpayer if
40 such entity and the taxpayer have eighty percent or more common direct
41 or indirect, actual or beneficial ownership.

42 (F) Receipts constituting account maintenance fees shall be deemed to
43 arise from services performed at the mailing address in the records of
44 the taxpayer of the customer who is responsible for paying such account
45 maintenance fees.

46 (G) Receipts constituting fees for management or advisory services,
47 including fees for advisory services in relation to merger or acquisi-
48 tion activities, but excluding fees paid for services described in para-
49 graph one of subdivision (e-2) of this section, shall be deemed to arise
50 from services performed at the mailing address in the records of the
51 taxpayer of the customer who is responsible for paying such fees.

52 (2) For purposes of this subdivision, the term "securities" shall have
53 the same meaning as in paragraph two of subdivision (c) of section four
54 hundred seventy-five of the internal revenue code and the term "commod-
55 ities" shall have the same meaning as in paragraph two of subdivision
56 (e) of section four hundred seventy-five of such code. The term "regis-

1 tered securities or commodities broker or dealer" means a broker or
2 dealer registered as such by the securities and exchange commission or
3 the commodities futures trading commission, and shall include an OTC
4 derivatives dealer as defined under regulations of the securities and
5 exchange commission at title seventeen, part two hundred forty, section
6 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

7 (3) If the taxpayer receives any of the receipts enumerated in para-
8 graph one of this subdivision as a result of a securities correspondent
9 relationship such taxpayer has with another registered securities or
10 commodities broker or dealer with the taxpayer acting in this relation-
11 ship as the clearing firm, such receipts shall be deemed to arise from
12 services performed within the city to the extent set forth in each of
13 the subparagraphs in paragraph one of this subdivision. The amount of
14 such receipts shall exclude the amount the taxpayer is required to pay
15 to the correspondent firm for such correspondent relationship. If the
16 taxpayer receives any of the receipts enumerated in paragraph one of
17 this subdivision as a result of a securities correspondent relationship
18 such taxpayer has with another registered securities or commodities
19 broker or dealer with the taxpayer acting in this relationship as the
20 introducing firm, such receipts shall be deemed to arise from services
21 performed within the city to the extent set forth in each of the subpar-
22 agraphs in paragraph one of this subdivision.

23 (4) If, for purposes of subparagraph (A), (B), (F), or (G) of para-
24 graph one of this subdivision, and clause (i) of subparagraph (C) of
25 paragraph one of this subdivision, the taxpayer is unable from its
26 records to determine the mailing address of the customer, the receipts
27 described in any of such subparagraphs and such clause shall be deemed
28 to arise from services performed at the branch or office of the taxpayer
29 that generates the transaction for the customer that generated such
30 receipts.

31 (f) Allocation of investment income. (1) The investment income of an
32 unincorporated business shall be allocated to the city by multiplying
33 such investment income by an investment allocation percentage to be
34 determined as follows:

35 (A) multiply the amount of its investment capital invested in each
36 stock, bond or other security, other than governmental securities,
37 during the period covered by its return by the issuer's allocation
38 percentage, determined as provided in paragraph two of this subdivision,
39 of the issuer or obligor thereof:

40 (B) add together the products so obtained; and

41 (C) divide the sum so obtained by the total of its investment capital
42 invested during such period in stocks, bonds and other securities;
43 provided, however, that in case any investment capital is invested in
44 any stock, bond or other security during only a portion of the period
45 covered by the return, only such portion of such capital shall be taken
46 into account; and provided, further, that if a taxpayer's investment
47 allocation percentage is zero, interest received on bank accounts shall
48 be allocated in the manner provided in subdivision (b), (c) or (d) of
49 this section.

50 (2) (A) In the case of an issuer or obligor subject to tax under
51 subchapter two or three-A of chapter six of this title, or subject to
52 tax as a utility corporation under chapter eleven of this title, the
53 issuer's allocation percentage shall be the percentage of the appropri-
54 ate measure which is required to be allocated within the city on the
55 report or reports, if any, required of the issuer or obligor under chap-
56 ter six or eleven of this title for the preceding year. The appropriate

1 measure referred to in this subparagraph shall be: in the case of an
2 issuer or obligor subject to subchapter two of chapter six of this
3 title, entire capital; and in the case of an issuer or obligor subject
4 to chapter eleven of this title as a utility corporation, gross income.

5 (B) In the case of an issuer or obligor subject to tax under part four
6 of subchapter three of chapter six of this title, the issuer's allo-
7 cation percentage shall be determined as follows:

8 (i) In the case of a banking corporation described in paragraphs one
9 through eight of subdivision (a) of section 11-640 of this title which
10 is organized under the laws of the United States, this state or any
11 other state of the United States, the issuer's allocation percentage
12 shall be its alternative entire net income allocation percentage, as
13 defined in subdivision (c) of section 11-642 of this title, for the
14 preceding year. In the case of such a banking corporation whose alterna-
15 tive entire net income for the preceding year is derived exclusively
16 from business carried on within the city, its issuer's allocation
17 percentage shall be one hundred percent.

18 (ii) In the case of a banking corporation described in paragraph two
19 of subdivision (a) of section 11-640 of this title which is organized
20 under the laws of a country other than the United States, the issuer's
21 allocation percentage shall be determined by dividing (I) the amount
22 described in clause (i) of subparagraph (A) of paragraph two of subdivi-
23 sion (a) of section 11-642 of this title with respect to such issuer or
24 obligor for the preceding year, by (II) the gross income of such issuer
25 or obligor from all sources within and without the United States, for
26 such preceding year, whether or not included in alternative entire net
27 income for such year.

28 (iii) In the case of an issuer or obligor described in paragraph nine
29 of subdivision (a) or in paragraph two of subdivision (d) of section
30 11-640 of this title, the issuer's allocation percentage shall be deter-
31 mined by dividing the portion of the entire capital of the issuer or
32 obligor allocable to the city for the preceding year by the entire capi-
33 tal, wherever located, of the issuer or obligor for the preceding year.

34 (C) Provided, however, that if a report or reports for the preceding
35 year are not filed, or if filed do not contain information which would
36 permit the determination of such issuer's allocation percentage, then
37 the issuer's allocation percentage to be used shall, at the discretion
38 of the commissioner of finance, be either (i) the issuer's allocation
39 percentage derived from the most recently filed report or reports of the
40 issuer or obligor or (ii) a percentage calculated, by the commissioner
41 of finance, reasonably to indicate the degree of economic presence in
42 the city of the issuer or obligor during the preceding year.

43 (3) For purposes of this subdivision, investment capital shall be
44 determined by taking the average value of the gross assets included
45 therein, less liabilities deductible therefrom pursuant to the
46 provisions of subdivision (h) of section 11-501 of this chapter. The
47 value of investment capital which consists of marketable securities
48 shall be the fair market value thereof and the value of investment capi-
49 tal other than marketable securities shall be the value thereof shown on
50 the books and records of the unincorporated business in accordance with
51 generally accepted accounting principles.

52 (g) Special rules for manufacturing businesses. (1) For taxable years
53 beginning on or after July first, nineteen hundred ninety-six and before
54 January first, two thousand eleven, a manufacturing business may elect
55 to determine its business allocation percentage by adding together the
56 percentages determined under paragraphs one, two and three of subdivi-

1 sion (c) of this section and an additional percentage equal to the
2 percentage determined under paragraph three of subdivision (c) of this
3 section, and dividing the result by the number of percentages so added
4 together.

5 (2) An election under this subdivision must be made on a timely filed
6 (determined with regard to extensions granted) original return for the
7 taxable year. Once made for a taxable year, such election shall be irre-
8 vocable for that taxable year. A separate election must be made for each
9 taxable year. A manufacturing business that has failed to make an
10 election as provided in this paragraph shall be required to determine
11 its business allocation percentage without regard to the provisions of
12 this subdivision. Notwithstanding anything in this paragraph to the
13 contrary, the commissioner of finance may permit a manufacturing busi-
14 ness to make or revoke an election under this subdivision, upon such
15 terms and conditions as the commissioner may prescribe, where the
16 commissioner determines that such permission should be granted in the
17 interests of fairness and equity due to a change in circumstances
18 resulting from an audit adjustment.

19 (3) As used in this subdivision, the term "manufacturing business"
20 means an unincorporated business primarily engaged in the manufacturing
21 and sale thereof of tangible personal property; and the term "manufac-
22 turing" includes the process, including the assembly process (i) of
23 working raw materials into wares suitable for use or (ii) which gives
24 new shapes, new qualities or new combinations to matter which already
25 has gone through some artificial process, by the use of machinery,
26 tools, appliances and other similar equipment. An unincorporated busi-
27 ness shall be deemed to be primarily engaged in the activities described
28 in the preceding sentence if more than fifty percent of its gross
29 receipts for the taxable year are attributable to such activities.

30 (h) Notwithstanding subdivision (d) of this section, if it shall
31 appear to the commissioner of finance that any business or investment
32 allocation percentage determined pursuant to this section does not prop-
33 erly reflect the activity, business, or income of a taxpayer within the
34 city, the commissioner of finance shall be authorized in his or her
35 discretion, in the case of a business allocation percentage, to adjust
36 it by (1) excluding one or more of the factors therein; (2) including
37 one or more factors, such as expenses, purchases, contract values, minus
38 subcontract values; (3) excluding one or more assets in computing such
39 allocation percentage, provided the income therefrom is also excluded in
40 determining unincorporated business entire net income, or (4) any other
41 similar or different method calculated to effect a fair and proper allo-
42 cation of the income reasonably attributable to the city, and in the
43 case of an investment allocation percentage, to adjust it by excluding
44 one or more assets in computing such percentage; provided the income
45 therefrom is also excluded in determining unincorporated business entire
46 net income. The commissioner of finance from time to time shall publish
47 all rulings of general public interest with respect to any application
48 of the provisions of this subdivision.

49 (i) Notwithstanding subdivision (c) of this section, but subject to
50 subdivision (g) of this section, the business allocation percentage
51 shall be computed in the manner set forth in this subdivision.

52 (1) For taxable years beginning in two thousand nine, the business
53 allocation percentage shall be determined by adding together the follow-
54 ing percentages:

55 (A) the product of thirty percent and the percentage determined under
56 paragraph one of subdivision (c) of this section,

1 (B) the product of thirty percent and the percentage determined under
2 paragraph two of subdivision (c) of this section, and

3 (C) the product of forty percent and the percentage determined under
4 paragraph three of subdivision (c) of this section.

5 (2) For taxable years beginning in two thousand ten, the business
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (A) the product of twenty-seven percent and the percentage determined
9 under paragraph one of subdivision (c) of this section,

10 (B) the product of twenty-seven percent and the percentage determined
11 under paragraph two of subdivision (c) of this section, and

12 (C) the product of forty-six percent and the percentage determined
13 under paragraph three of subdivision (c) of this section.

14 (3) For taxable years beginning in two thousand eleven, the business
15 allocation percentage shall be determined by adding together the follow-
16 ing percentages:

17 (A) the product of twenty-three and one-half percent and the percent-
18 age determined under paragraph one of subdivision (c) of this section,

19 (B) the product of twenty-three and one-half percent and the percent-
20 age determined under paragraph two of subdivision (c) of this section,
21 and

22 (C) the product of fifty-three percent and the percentage determined
23 under paragraph three of subdivision (c) of this section.

24 (4) For taxable years beginning in two thousand twelve, the business
25 allocation percentage shall be determined by adding together the follow-
26 ing percentages:

27 (A) the product of twenty percent and the percentage determined under
28 paragraph one of subdivision (c) of this section,

29 (B) the product of twenty percent and the percentage determined under
30 paragraph two of subdivision (c) of this section, and

31 (C) the product of sixty percent and the percentage determined under
32 paragraph three of subdivision (c) of this section.

33 (5) For taxable years beginning in two thousand thirteen, the business
34 allocation percentage shall be determined by adding together the follow-
35 ing percentages:

36 (A) the product of sixteen and one-half percent and the percentage
37 determined under paragraph one of subdivision (c) of this section,

38 (B) the product of sixteen and one-half percent and the percentage
39 determined under paragraph two of subdivision (c) of this section, and

40 (C) the product of sixty-seven percent and the percentage determined
41 under paragraph three of subdivision (c) of this section.

42 (6) For taxable years beginning in two thousand fourteen, the business
43 allocation percentage shall be determined by adding together the follow-
44 ing percentages:

45 (A) the product of thirteen and one-half percent and the percentage
46 determined under paragraph one of subdivision (c) of this section,

47 (B) the product of thirteen and one-half percent and the percentage
48 determined under paragraph two of subdivision (c) of this section, and

49 (C) the product of seventy-three percent and the percentage determined
50 under paragraph three of subdivision (c) of this section.

51 (7) For taxable years beginning in two thousand fifteen, the business
52 allocation percentage shall be determined by adding together the follow-
53 ing percentages:

54 (A) the product of ten percent and the percentage determined under
55 paragraph one of subdivision (c) of this section,

1 (B) the product of ten percent and the percentage determined under
2 paragraph two of subdivision (c) of this section, and

3 (C) the product of eighty percent and the percentage determined under
4 paragraph three of subdivision (c) of this section.

5 (8) For taxable years beginning in two thousand sixteen, the business
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (A) the product of six and one-half percent and the percentage deter-
9 mined under paragraph one of subdivision (c) of this section,

10 (B) the product of six and one-half percent and the percentage deter-
11 mined under paragraph two of subdivision (c) of this section, and

12 (C) the product of eighty-seven percent and the percentage determined
13 under paragraph three of subdivision (c) of this section.

14 (9) For taxable years beginning in two thousand seventeen, the busi-
15 ness allocation percentage shall be determined by adding together the
16 following percentages:

17 (A) the product of three and one-half percent and the percentage
18 determined under paragraph one of subdivision (c) of this section,

19 (B) the product of three and one-half percent and the percentage
20 determined under paragraph two of subdivision (c) of this section, and

21 (C) the product of ninety-three percent and the percentage determined
22 under paragraph three of subdivision (c) of this section.

23 (10) For taxable years beginning after two thousand seventeen, the
24 business allocation percentage shall be the percentage determined under
25 paragraph three of subdivision (c) of this section.

26 (11) The commissioner shall promulgate rules necessary to implement
27 the provisions of this subdivision under such circumstances where any of
28 the percentages to be determined under paragraph one, two or three of
29 subdivision (c) of this section cannot be determined because the taxpay-
30 er has no property, payroll or gross receipts from sales or services
31 within or without the city.

32 § 11-509 Deductions not subject to allocation. (a) In computing
33 unincorporated business taxable income, there shall be allowed, without
34 allocation under section 11-508 of this chapter, deductions for reason-
35 able compensation for taxable years beginning before January first, two
36 thousand seven, not in excess of five thousand dollars, and for taxable
37 years beginning on or after January first, two thousand seven, not in
38 excess of ten thousand dollars, for personal services of the proprietor
39 and each partner actively engaged in the unincorporated business, but
40 the aggregate of such deductions shall not exceed twenty per centum of
41 the unincorporated business taxable income computed without the benefit
42 of any deductions under this subdivision or the unincorporated business
43 exemptions under section 11-510 of this chapter.

44 (b) Subject to the conditions provided in paragraphs three and four of
45 this subdivision at the election of the taxpayer there shall also be
46 allowed, without allocation under section 11-508 of this chapter, either
47 or both of the items set forth in paragraphs one and two of this subdivi-
48 sion, except that only one of the items shall be allowed with respect
49 to any one item of property.

50 (1) Depreciation with respect to any property such as described in
51 paragraphs three or four of this subdivision, and subject to the condi-
52 tions provided therein, not exceeding twice the depreciation allowed
53 with respect to the same property for federal income tax purposes. Such
54 deduction shall be allowed only upon condition that no deduction shall
55 be allowed pursuant to section 11-507 of this chapter for depreciation
56 of the same property, and the total of all deductions allowed pursuant

1 to this paragraph in any taxable year or years with respect to any prop-
2 erty shall not exceed its cost or other basis and, in the case of an
3 unincorporated business carried on both within and without this city,
4 with respect to property described in paragraph four of this subdivi-
5 sion, such total shall not exceed its cost or other basis multiplied by
6 (A) the percentage of the excess of the taxpayer's unincorporated busi-
7 ness gross income over its unincorporated business deductions allocated
8 to this city, or (B) the percentage of the taxpayer's business income
9 allocated to this city, whichever is applicable, which percentage shall
10 be determined under section 11-508 of this chapter for the first year
11 such depreciation is deducted.

12 (2) Expenditures paid or incurred during the taxable year for the
13 construction, reconstruction, erection or acquisition of any property
14 such as described in paragraph three or four of this subdivision, and
15 subject to the conditions provided therein, which is used or to be used
16 for purposes of research or development in the experimental or laborato-
17 ry sense. Such purposes shall not be deemed to include the ordinary
18 testing or inspection of materials or products for quality control,
19 efficiency surveys, management studies, consumer surveys, advertising,
20 promotions or research in connection with literary, historical or simi-
21 lar projects. Such deduction shall be allowed only on condition that, in
22 the case of an unincorporated business carried on both within and with-
23 out this city, with respect to property described in paragraph four of
24 this subdivision, such deduction does not exceed the expenditures multi-
25 plied by (A) the percentage of the excess of the taxpayer's unincorpo-
26 rated business gross income over its unincorporated business deductions
27 allocated to this city, or (B) the percentage of the taxpayer's business
28 income allocated to this city, whichever is applicable, which percentage
29 shall be determined under section 11-508 of this chapter for the first
30 year such depreciation is deducted, and that, for the taxable year and
31 all succeeding taxable years, no deduction shall be allowed pursuant to
32 section 11-507 of this chapter on account of such expenditures or on
33 account of depreciation of the same property, except to the extent that
34 its basis may be attributable to factors other than such expenditures,
35 or in case a deduction is allowable pursuant to this paragraph for only
36 a part of such expenditures, on condition that any deduction allowable
37 for federal income tax purposes on account of such expenditures or on
38 account of depreciation of the same property shall be proportionately
39 reduced in determining the deductions allowable pursuant to section
40 11-507 of this chapter for the taxable year and all succeeding taxable
41 years. With respect to property which is used or to be used for research
42 and development only in part, or during only part of its useful life,
43 the deduction allowable pursuant to this paragraph shall be limited to a
44 proportionate part of the expenditures relating thereto. If a deduction
45 shall have been allowed pursuant to this paragraph for all or part of
46 such expenditures with respect to any property, and such property is
47 used for purposes other than research and development to a greater
48 extent than originally reported, the taxpayer shall report such use in
49 the taxpayer's return for the first taxable year during which it occurs,
50 and the commissioner of finance may recompute the tax for the year or
51 years for which such deduction was allowed, and may assess any addi-
52 tional tax resulting from such recomputation within the time fixed by
53 subdivision (c) of section 11-523 of this chapter.

54 (3) For purposes of this paragraph, such deduction shall be allowed
55 only with respect to tangible property which is depreciable pursuant to
56 section one hundred sixty-seven of the internal revenue code, having a

1 situs in the city and used in the taxpayer's trade or business, (A)
2 constructed, reconstructed or erected after December thirty-first, nine-
3 teen hundred sixty-five, pursuant to a contract which was, on or before
4 December thirty-first, nineteen hundred sixty-seven, and at all times
5 thereafter, binding on the taxpayer or, property, the physical
6 construction, reconstruction or erection of which began on or before
7 December thirty-first, nineteen hundred sixty-seven or which began after
8 such date pursuant to an order placed on or before December thirty-
9 first, nineteen hundred sixty-seven, and then only with respect to that
10 portion of the basis thereof or the expenditure relating thereto which
11 is properly attributable to such construction, reconstruction or
12 erection after December thirty-first, nineteen hundred sixty-five, or
13 (B) acquired after December thirty-first, nineteen hundred sixty-five,
14 pursuant to a contract which was, on or before December thirty-first,
15 nineteen hundred sixty-seven, and at all times thereafter, binding on
16 the taxpayer or pursuant to an order placed on or before December thir-
17 ty-first, nineteen hundred sixty-seven, by purchase as defined in
18 section one hundred seventy-nine (d) of the internal revenue code, if
19 the original use of such property commenced with the taxpayer, commenced
20 in the city and commenced after December thirty-first, nineteen hundred
21 sixty-five or (C) acquired, constructed, reconstructed, or erected
22 subsequent to December thirty-first, nineteen hundred sixty-seven, if
23 such acquisition, construction, reconstruction or erection is pursuant
24 to a plan of the taxpayer which was in existence December thirty-first,
25 nineteen hundred sixty-seven and not thereafter substantially modified,
26 and such acquisition, construction, reconstruction or erection would
27 qualify under the rules in paragraph four, five or six of subsection (h)
28 of section forty-eight of the internal revenue code provided all refer-
29 ences in such paragraphs four, five and six to the dates October nine,
30 nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six,
31 shall be read as December thirty-first, nineteen hundred sixty-seven. A
32 taxpayer shall be allowed a deduction under subparagraph (A), (B) or (C)
33 of this paragraph only if the tangible property shall be delivered or
34 the construction, reconstruction or erection shall be completed on or
35 before December thirty-first, nineteen hundred sixty-nine, except in the
36 case of tangible property which is acquired, constructed, reconstructed
37 or erected pursuant to a contract which was, on or before December thir-
38 ty-first, nineteen hundred sixty-seven, and at all times thereafter,
39 binding on the taxpayer. However, for any taxable year beginning on or
40 after January first, nineteen hundred sixty-eight, a taxpayer shall not
41 be allowed a deduction under paragraph one of this subdivision with
42 respect to tangible personal property leased to any other person or
43 corporation, provided, any contract or agreement to lease or rent or for
44 a license to use such property shall be considered a lease. With
45 respect to property which a taxpayer uses for purposes other than leas-
46 ing for part of a taxable year and leases for a part of a taxable year,
47 a deduction under paragraph one of this subdivision may be taken in
48 proportion to the part of the year such property is used by the taxpay-
49 er.

50 (4) For purposes of this paragraph, such deductions shall be allowed
51 only with respect to tangible property which is depreciable pursuant to
52 section one hundred sixty-seven of the internal revenue code, having a
53 situs in this city and used in the taxpayer's trade or business, (A) the
54 construction, reconstruction, or erection of which is completed after
55 December thirty-first, nineteen hundred sixty-seven, and then only with
56 respect to that portion of the basis thereof or the expenditures relat-

1 ing thereto which is properly attributable to such construction, recon-
2 struction or erection after December thirty-first, nineteen hundred
3 sixty-three, or (B) acquired after December thirty-first, nineteen
4 hundred sixty-seven, by purchase as defined in section one hundred
5 seventy-nine (d) of the internal revenue code, if the original use of
6 such property commenced with the taxpayer, commenced in this city and
7 commenced after December thirty-first, nineteen hundred sixty-five.
8 Provided, however, a deduction under paragraph one of this subdivision
9 shall be allowed with respect to property described in this paragraph
10 only on condition that such property shall be principally used by the
11 taxpayer in the production of goods by manufacturing; processing; assem-
12 bling; refining; mining; extracting; farming; agriculture; horticulture;
13 floriculture; viticulture or commercial fishing, provided, manufacturing
14 shall mean the process of working raw materials into wares suitable for
15 use or which gives new shapes, new qualities or new combinations to
16 matter which already has gone through some artificial process by the use
17 of machinery, tools, appliances, and other similar equipment. Property
18 used in the production of goods shall include machinery, equipment or
19 other tangible property which is principally used in the repair and
20 service of other machinery, equipment or other tangible property used
21 principally in the production of goods and shall include all facilities
22 used in the manufacturing operation, including storage of material to be
23 used in manufacturing and of the products that are manufactured. At the
24 option of the taxpayer, air and water pollution control facilities which
25 qualify for elective deductions under subdivision (i) of section 11-507
26 of this chapter may be treated, for purposes of this paragraph, as
27 tangible property principally used in the production of goods by manu-
28 facturing; processing; assembling; refining; mining; extracting; farm-
29 ing; agriculture; horticulture; floriculture; viticulture or commercial
30 fishing, in which event, a deduction shall not be allowed under subdivi-
31 sion (i) of section 11-507 of this chapter. However, for any taxable
32 year beginning on or after January first, nineteen hundred sixty-eight,
33 a taxpayer shall not be allowed a deduction under paragraph one of this
34 subdivision with respect to tangible personal property leased to any
35 other person or corporation, provided, any contract or agreement to
36 lease or rent or for a license to use such property shall be considered
37 a lease. With respect to property which a taxpayer uses for purposes
38 other than leasing for part of a taxable year and leases for a part of a
39 taxable year, a deduction under paragraph one shall be allowed in
40 proportion to the part of the year such property is used by the taxpay-
41 er.

42 (5) If the deductions allowable for any taxable year pursuant to this
43 subdivision exceed the taxpayer's unincorporated business taxable
44 income, determined without the allowance of such deductions, the excess
45 may be carried over to the following taxable year or years and may be
46 deducted, without allocation under section 11-508 of this chapter, in
47 computing unincorporated business taxable income for such year or years.

48 (6) In any taxable year when property is sold or otherwise disposed
49 of, with respect to which a deduction has been allowed pursuant to para-
50 graph one or two of this subdivision, the basis of such property shall
51 be adjusted to reflect the deductions so allowed, and if the basis as so
52 adjusted is lower than the adjusted basis of the same property for
53 federal income tax purposes, there shall be added to federal gross
54 income the amount of the difference between such adjusted bases.

1 § 11-510 Unincorporated business exemptions. In computing unincorpo-
2 rated business taxable income, there shall be allowed, without allo-
3 cation under section 11-508 of this chapter:

4 (a) an unincorporated business exemption of five thousand dollars,
5 prorated for taxable years of less than twelve months under regulations
6 of the commissioner of finance;

7 (b) if a partner in an unincorporated business is taxable under this
8 chapter or under any local law imposed pursuant to section one of chap-
9 ter seven hundred seventy-two of the laws of nineteen hundred sixty-six,
10 an exemption for the amount of the partner's proportionate interest in
11 the excess of the unincorporated business gross income over the
12 deductions allowed under sections 11-507 and 11-509 of this chapter, but
13 this exemption shall be limited to the amount which is included in the
14 partner's unincorporated business taxable income allocable to the city,
15 or included in a corporate partner's net income allocable to the city,
16 provided, however, no such exemption shall be allowed to an unincorpo-
17 rated business for any taxable year of the unincorporated business
18 beginning after June thirtieth, nineteen hundred ninety-four.

19 § 11-511 Declarations of estimated tax. (a) Requirement of declara-
20 tion. Except as provided in subdivision (j) of this section, every
21 unincorporated business shall make a declaration of its estimated tax
22 for the taxable year, containing such information as the commissioner of
23 finance may prescribe by regulations or instruction, if: (1) for taxable
24 years beginning after nineteen hundred eighty-six but before nineteen
25 hundred ninety-six, its unincorporated business taxable income can
26 reasonably be expected to exceed fifteen thousand dollars; (2) for taxa-
27 ble years beginning in nineteen hundred ninety-six, its unincorporated
28 business taxable income can reasonably be expected to exceed twenty
29 thousand dollars; (3) for taxable years beginning after nineteen hundred
30 ninety-six but before two thousand nine, its estimated tax can reason-
31 ably be expected to exceed one thousand eight hundred dollars; and (4)
32 for taxable years beginning after two thousand eight, its estimated tax
33 can reasonably be expected to exceed three thousand four hundred
34 dollars.

35 (b) Definition of estimated tax. The term "estimated tax" means the
36 amount which an unincorporated business estimates to be its tax under
37 this chapter for the taxable year, less the amount which it estimates to
38 be the sum of any credits allowable against the tax other than the cred-
39 it allowable under subdivision (c) of section 11-503 of this chapter.

40 (c) Time for filing declaration. Except as hereinafter provided, a
41 declaration of estimated tax required under this section shall be filed
42 on or before April fifteenth of the taxable year provided, however, that
43 if the requirements of subdivision (a) of this section are first met:

44 (1) after April first and before June second of the taxable year, the
45 declaration shall be filed on or before June fifteenth, or

46 (2) after June first and before September second of the taxable year,
47 the declaration shall be filed on or before September fifteenth, or

48 (3) after September first of the taxable year, the declaration shall
49 be filed on or before January fifteenth of the succeeding year.

50 (d) Filing of declarations on or before January fifteenth.

51 (1) A declaration of estimated tax by an unincorporated business
52 having an estimated unincorporated business taxable income from farming,
53 including oyster farming, for the taxable year which is at least two-
54 thirds of its total estimated unincorporated business taxable income for
55 the taxable year may be filed at any time on or before January fifteenth
56 of the succeeding year.

1 (2) For taxable years beginning before nineteen hundred ninety-seven,
2 a declaration of estimated tax under this section of forty dollars or
3 less for the taxable year may be filed at any time on or before January
4 fifteenth of the succeeding year under regulations of the commissioner
5 of finance.

6 (e) Amendments of declaration. An unincorporated business may amend a
7 declaration under regulations of the commissioner of finance.

8 (f) Return as declaration or amendment. If on or before February
9 fifteenth of the succeeding taxable year an unincorporated business
10 subject to the estimated tax requirements of this section files its
11 return for the taxable year for which the declaration is required, and
12 pays on or before such date the full amount of the tax shown to be due
13 on the return:

14 (1) such return shall be considered as its declaration if no declara-
15 tion was required to be filed during the taxable year, but is otherwise
16 required to be filed on or before January fifteenth of the succeeding
17 year, and

18 (2) such return shall be considered as the amendment permitted by
19 subdivision (e) of this section to be filed on or before January
20 fifteenth if the tax shown on the return is greater than the estimated
21 tax shown in a declaration previously made.

22 (g) Fiscal year. This section shall apply to a taxable year other
23 than a calendar year by the substitution of the months of such fiscal
24 year for the corresponding months specified in this section.

25 (h) Short taxable year. An unincorporated business subject to the
26 estimated tax requirements of this section and having a taxable year of
27 less than twelve months shall make a declaration in accordance with
28 regulations of the commissioner of finance.

29 (i) Declaration of unincorporated business under a disability. The
30 declaration of estimated tax for an unincorporated business which is
31 unable to make a declaration for any reason shall be made and filed by
32 the committee, fiduciary or other person charged with the care of the
33 property of such unincorporated business, other than a receiver in
34 possession of only a part of such property, or by his or her duly
35 authorized agent.

36 (j) Declaration of estimated tax for taxable years beginning prior to
37 July thirteenth, nineteen hundred sixty-six. Notwithstanding subdivision
38 (c) of this section, no declaration of estimated tax required by subdivi-
39 sion (a) of this section need be filed until September twelfth, nine-
40 teen hundred sixty-six.

41 § 11-512 Payments of estimated tax. (a) General. The estimated tax
42 with respect to which a declaration is required shall be paid as
43 follows:

44 (1) If the declaration is filed on or before April fifteenth of the
45 taxable year, the estimated tax shall be paid in four equal install-
46 ments. The first installment shall be paid at the time of the filing of
47 the declaration, and the second, third and fourth installments shall be
48 paid on the following June fifteenth, September fifteenth, and January
49 fifteenth, respectively.

50 (2) If the declaration is filed after April fifteenth and not after
51 June fifteenth of the taxable year, and is not required to be filed on
52 or before April fifteenth of the taxable year, the estimated tax shall
53 be paid in three equal installments. The first installment shall be
54 paid at the time of the filing of the declaration, and the second and
55 third installments shall be paid on the following September fifteenth
56 and January fifteenth, respectively.

1 (3) If the declaration is filed after June fifteenth and not after
2 September fifteenth of the taxable year, and is not required to be filed
3 on or before June fifteenth of the taxable year, the estimated tax shall
4 be paid in two equal installments. The first installment shall be paid
5 at the time of the filing of the declaration, and the second shall be
6 paid on the following January fifteenth.

7 (4) If the declaration is filed after September fifteenth of the tax-
8 ble year, and is not required to be filed on or before September
9 fifteenth of the taxable year, the estimated tax shall be paid in full
10 at the time of the filing of the declaration.

11 (5) If the declaration is filed after the time prescribed therefor, or
12 after the expiration of any extension of time therefor, paragraphs two,
13 three and four of this subdivision shall not apply, and there shall be
14 paid at the time of such filing all installments of estimated tax paya-
15 ble at or before such time, and the remaining installments shall be paid
16 at the times at which, and in the amounts in which, they would have been
17 payable if the declaration had been filed when due.

18 (b) Amendments of declaration. If any amendment of a declaration is
19 filed, the remaining installments, if any, shall be ratably increased or
20 decreased, as the case may be, to reflect any increase or decrease in
21 the estimated tax by reason of such amendment, and if any amendment is
22 made after September fifteenth of the taxable year, any increase in the
23 estimated tax by reason thereof shall be paid at the time of making such
24 amendment.

25 (c) Application to short taxable year. This section shall apply to a
26 taxable year of less than twelve months in accordance with regulations
27 of the commissioner of finance.

28 (d) Fiscal year. This section shall apply to a taxable year other
29 than a calendar year by the substitution of the months of such fiscal
30 year for the corresponding months specified in this section.

31 (e) Installments paid in advance. An unincorporated business may elect
32 to pay any installment of its estimated tax prior to the date prescribed
33 for the payment thereof.

34 (f) Cross reference. For unincorporated businesses with taxable years
35 beginning prior to July thirteenth, nineteen hundred sixty-six, see
36 subdivision (j) of section 11-511 of this chapter.

37 (g) Taxpayers with credit relating to stock transfer tax. The portion
38 of an overpayment attributable to a credit allowable pursuant to subdi-
39 vision (c) of section 11-503 of this chapter may not be credited against
40 any payment due under this section.

41 § 11-513 Accounting periods and methods. (a) Accounting periods. A
42 taxpayer's taxable year under this chapter shall be the same as the
43 taxpayer's taxable year for federal income tax purposes.

44 (b) Accounting methods. A taxpayer's method of accounting under this
45 chapter shall be the same as the taxpayer's method of accounting for
46 federal income tax purposes. In the absence of any method of accounting
47 for federal income tax purposes, unincorporated business taxable income
48 shall be computed under such method as in the opinion of the commission-
49 er of finance clearly reflects income.

50 (c) Change of accounting period or method. (1) If a taxpayer's taxa-
51 ble year or method of accounting is changed for federal income tax
52 purposes, the taxable year or method of accounting for purposes of this
53 chapter shall be similarly changed.

54 (2) If a taxpayer's method of accounting is changed, other than from
55 an accrual to an installment method, any additional tax which results
56 from adjustments determined to be necessary solely by reason of the

1 change shall not be greater than if such adjustments were ratably allo-
2 cated and included for the taxable year of the change and the preceding
3 taxable years, not in excess of two, beginning after January first,
4 nineteen hundred sixty-six, during which the taxpayer used the method of
5 accounting from which the change is made.

6 (3) If a taxpayer's method of accounting is changed from an accrual
7 to an installment method, any additional tax for the year of such change
8 of method and for any subsequent year, which is attributable to the
9 receipt of installment payments properly accrued in a prior year, shall
10 be reduced by the portion of tax for any prior taxable year attributable
11 to the accrual of such installment payments, in accordance with regu-
12 lations of the commissioner of finance.

13 § 11-514 Returns, payment of tax. (a) General. An unincorporated
14 business income tax return shall be made and filed, and the balance of
15 any tax shown on the face of such return, not previously paid as
16 installments of estimated tax, shall be paid, on or before the fifteenth
17 day of the fourth month following the close of a taxable year, except
18 that in the case of an unincorporated business classified as a partner-
19 ship for federal income tax purposes, such return shall be made and
20 filed and such balance shall be paid on or before the fifteenth day of
21 the third month following the close of a taxable year for taxable years
22 beginning on or after January first, two thousand sixteen, by or for
23 every:

24 (1) unincorporated business, for taxable years beginning after nine-
25 teen hundred eighty-six but before nineteen hundred ninety-seven, having
26 unincorporated business gross income, determined for purposes of this
27 subdivision without any deduction for the cost of goods sold or services
28 performed, of more than ten thousand dollars, or having any amount of
29 unincorporated business taxable income;

30 (2) partnership, for taxable years beginning after nineteen hundred
31 ninety-six, having unincorporated business gross income, determined for
32 purposes of this subdivision without any deduction for the cost of goods
33 sold or services performed, of more than twenty-five thousand dollars,
34 or having unincorporated business taxable income of more than fifteen
35 thousand dollars;

36 (3) unincorporated business other than a partnership, for taxable
37 years beginning after nineteen hundred ninety-six, having unincorporated
38 business gross income, determined for purposes of this subdivision with-
39 out any deduction for the cost of goods sold or services performed, of
40 more than seventy-five thousand dollars, or having unincorporated busi-
41 ness taxable income of more than thirty-five thousand dollars; and

42 (4) unincorporated business, for taxable years beginning after two
43 thousand eight, having unincorporated business gross income, determined
44 for purposes of this subdivision without any deduction for the cost of
45 goods sold or services performed, of more than ninety-five thousand
46 dollars.

47 (b) Decedents. The return for any deceased individual shall be made
48 and filed by his or her executor, administrator, or other person charged
49 with his or her property. If a final return of a decedent is for a
50 fractional part of a year, the due date of such return shall be the
51 fifteenth day of the fourth month following the close of the twelve-
52 month period which began with the first day of such fractional part of
53 the year.

54 (c) Individuals under a disability. The return for an individual who
55 is unable to make a return by reason of minority or other disability
56 shall be made and filed by such individual's guardian, committee, fidu-

1 ciary or other person charged with the care of his or her person or
2 property, other than a receiver in possession of only a part of his or
3 her property, or by such individual's duly authorized agent.

4 (d) Estates and trusts. The return for an estate or trust shall be
5 made and filed by the fiduciary.

6 (e) Joint fiduciaries. If two or more fiduciaries are acting jointly,
7 the return may be made by any one of them.

8 (f) Returns for taxable years ending prior to December thirty-first,
9 nineteen hundred sixty-six. With respect to taxable years ending prior
10 to December thirty-first, nineteen hundred sixty-six, the returns
11 required to be made and filed pursuant to this section shall be made and
12 filed on or before the fifteenth day of the fourth month following the
13 close of such taxable year or September twelfth, nineteen hundred
14 sixty-six, whichever is later.

15 (g) Taxpayers with credit relating to stock transfer tax. Subdivision
16 (a) of this section shall apply to a taxpayer which has a right to a
17 credit pursuant to subdivision (c) of section 11-503 of this chapter,
18 except that the tax, or balance thereof, payable to the commissioner of
19 finance in full pursuant to subdivision (a) of this section, at the time
20 the report is required to be filed, shall be calculated and paid at such
21 time as if the credit provided for in subdivision (c) of section 11-503
22 of this chapter were not allowed.

23 § 11-515 Time and place for filing returns and paying tax. A person
24 required to make and file a return under this chapter shall, without
25 assessment, notice or demand, pay any tax due thereon to the commission-
26 er of finance on or before the date fixed for filing such return, deter-
27 mined without regard to any extension of time for filing the return.
28 The commissioner of finance shall prescribe by regulation the place for
29 filing any return, declaration, statement, or other document required
30 pursuant to this chapter and for payment of any tax.

31 § 11-516 Signing of returns and other documents. (a) General. Any
32 return, declaration, statement or other document required to be made
33 pursuant to this chapter shall be signed in accordance with regulations
34 or instructions prescribed by the commissioner of finance. The fact
35 that an individual's name is signed to a return, declaration, statement,
36 or other document, shall be prima facie evidence for all purposes that
37 the return, declaration, statement or other document was actually signed
38 by such individual.

39 (b) Partnerships. Any return, statement or other document required of
40 a partnership shall be signed by one or more partners. The fact that a
41 partner's name is signed to a return, statement, or other document,
42 shall be prima facie evidence for all purposes that such partner is
43 authorized to sign on behalf of the partnership.

44 (c) Certifications. The making or filing of any return, declaration,
45 statement or other document or copy thereof required to be made or filed
46 pursuant to this chapter, including a copy of a federal return, shall
47 constitute a certification by the person making or filing such return,
48 declaration, statement or other document or copy thereof that the state-
49 ments contained therein are true and that any copy filed is a true copy.

50 § 11-517 Extensions of time. (a) General. The commissioner of
51 finance may grant a reasonable extension of time for payment of tax or
52 estimated tax, or any installment, or for filing any return, declara-
53 tion, statement, or other document required pursuant to this chapter, on
54 such terms and conditions as it may require. Except for a taxpayer who
55 is outside the United States, no such extension for filing any return,
56 declaration, statement or other document, shall exceed six months.

1 (b) Furnishing of security. If any extension of time is granted for
2 payment of any amount of tax, the commissioner of finance may require
3 the taxpayer to furnish a bond or other security in an amount not
4 exceeding twice the amount for which the extension of time for payment
5 is granted, on such terms and conditions as the commissioner of finance
6 may require.

7 § 11-518 Requirements concerning returns, notices, records and state-
8 ments. (a) General. The commissioner of finance may prescribe regu-
9 lations as to the keeping of records, the content and forms of returns
10 and statements, and the filing of copies of federal income tax returns
11 and determinations. The commissioner of finance may require any person,
12 by regulation or notice served upon such person, to make such returns,
13 render such statements, or keep such records, as the commissioner of
14 finance may deem sufficient to show whether or not such person is liable
15 under this chapter for tax or for collection of tax.

16 (b) Notice of qualification as receiver, etc. Every receiver, trustee
17 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
18 ary shall give notice of his or her qualification as such to the commis-
19 sioner of finance, as may be required by regulation.

20 § 11-519 Report of change in federal or New York state taxable
21 income. If the amount of a taxpayer's federal or New York state taxable
22 income reported on his or her federal or New York state income tax for
23 any taxable year is changed or corrected by the United States internal
24 revenue service or the New York state tax commission or other competent
25 authority, or as the result of a renegotiation of a contract or subcon-
26 tract with the United States or the state of New York, or if a taxpayer,
27 pursuant to subsection (d) of section sixty-two hundred thirteen of the
28 internal revenue code, executes a notice of waiver of the restrictions
29 provided in subsection (a) of said section, or if a taxpayer, pursuant
30 to subsection (f) of section six hundred eighty-one of the tax law,
31 executes a notice or waiver of the restrictions provided in subsection
32 (c) of such section of the tax law, the taxpayer shall report such
33 change or correction in federal or New York state taxable income or such
34 execution of such notice of waiver and the changes or corrections of the
35 taxpayer's federal or New York state taxable income on which it is
36 based, within ninety days after the final determination of such change,
37 correction, or renegotiation, or such execution of such notice of waiv-
38 er, or as otherwise required by the commissioner of finance, and shall
39 concede the accuracy of such determination or state wherein it is erro-
40 neous. Any taxpayer filing an amended federal or New York state income
41 tax return shall also file within ninety days thereafter an amended
42 return under this chapter, and shall give such information as the
43 commissioner of finance may require. The commissioner of finance may by
44 regulation prescribe such exceptions to the requirements of this section
45 as the commissioner deems appropriate.

46 § 11-519.1 Report of change of state sales and compensating use tax
47 liability. Where the state tax commission changes or corrects a taxpay-
48 er's sales and compensating use tax liability with respect to the
49 purchase or use of items for which a sales or compensating use tax cred-
50 it against the tax imposed by this chapter was claimed, the taxpayer
51 shall report such change or correction to the commissioner of finance
52 within ninety days of the final determination of such change or
53 correction, or as required by the commissioner of finance, and shall
54 concede the accuracy of such determination or state wherein it is erro-
55 neous. Any taxpayer filing an amended return or report relating to the
56 purchase or use of such items shall also file within ninety days there-

1 after a copy of such amended return or report with the commissioner of
2 finance.

3 § 11-520 Change of election. Any election expressly authorized by
4 this chapter, other than the election authorized by section 11-506 of
5 this chapter, may be changed on such terms and conditions as the commis-
6 sioner of finance may prescribe by regulation.

7 § 11-521 Notice of deficiency. (a) General. If upon examination of a
8 taxpayer's return under this chapter the commissioner of finance deter-
9 mines that there is a deficiency of income tax, the commissioner may
10 mail a notice of deficiency to the taxpayer. If a taxpayer fails to file
11 a return required under this chapter, the commissioner of finance is
12 authorized to estimate the taxpayer's city unincorporated business taxa-
13 ble income and tax thereon, from any information in the commissioner's
14 possession, and to mail a notice of deficiency to the taxpayer. A notice
15 of deficiency shall be mailed by certified or registered mail to the
16 taxpayer at his or her last known address in or out of the city. If the
17 taxpayer is deceased or under a legal disability, a notice of deficiency
18 may be mailed to his or her last known address in or out of the city,
19 unless the commissioner of finance has received notice of the existence
20 of a fiduciary relationship with respect to the taxpayer.

21 (b) Notice of deficiency as assessment. After ninety days from the
22 mailing of a notice of deficiency or, if the commissioner of finance has
23 established a conciliation procedure pursuant to section 11-124 of this
24 title and the taxpayer has requested a conciliation conference in
25 accordance therewith, after ninety days from the mailing of the concil-
26 iation decision or the date of the commissioner's confirmation of the
27 discontinuance of the conciliation proceeding, such notice shall be an
28 assessment of the amount of tax specified therein, together with the
29 interest, additions to tax and penalties stated in such notice, except
30 only for any such tax or other amounts as to which the taxpayer has
31 within such ninety day period filed with the tax appeals tribunal a
32 petition under section 11-529 of this chapter. If the notice of defi-
33 ciency or conciliation decision is addressed to a person outside of the
34 United States, such period shall be one hundred fifty days instead of
35 ninety days.

36 (c) Restrictions on assessment and levy. No assessment of a deficiency
37 in tax and no levy or proceeding in court for its collection shall be
38 made, begun or prosecuted, except as otherwise provided in section
39 11-534 of this chapter, until a notice of deficiency has been mailed to
40 the taxpayer, nor until the expiration of the time for filing a petition
41 with the tax appeals tribunal contesting such notice, nor, if a petition
42 with respect to the taxable year has been both served upon the commis-
43 sioner of finance and filed with the tax appeals tribunal, until the
44 decision of the tax appeals tribunal has become final. For exception in
45 the case of judicial review of the decision of the tax appeals tribunal,
46 see subdivision (c) of section 11-530 of this chapter.

47 (d) Exceptions for mathematical errors. If a mathematical error
48 appears on a return, including an overstatement of the amount paid as
49 estimated tax, the commissioner of finance shall notify the taxpayer
50 that an amount of tax in excess of that shown upon the return is due,
51 and that such excess has been assessed.

52 Such notice shall not be considered as a notice of deficiency for the
53 purposes of this section, subdivision (f) of section 11-527 of this
54 chapter, limiting credits or refunds after petition to the tax appeals
55 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
56 izing the filing of a petition with the tax appeals tribunal based on a

1 notice of deficiency, nor shall such assessment or collection be prohib-
2 ited by the provisions of subdivision (c) of this section.

3 (e) Exception where change in federal or New York state taxable income
4 is not reported.

5 (1) If the taxpayer fails to comply with section 11-519 of this chap-
6 ter in not reporting a change or correction increasing or decreasing the
7 taxpayer's federal or New York state taxable income as reported on the
8 taxpayer's federal or New York state return or in not reporting a change
9 or correction which is treated in the same manner as if it were a defi-
10 ciency for federal or New York state income tax purposes or in not
11 filing an amended return or in not reporting the execution of a notice
12 of waiver described in such section, instead of the mode and time of
13 assessment provided for in subdivision (b) of this section, the commis-
14 sioner of finance may assess a deficiency based upon such changed or
15 corrected federal or New York state taxable income by mailing to the
16 taxpayer a notice of additional tax due specifying the amount of the
17 deficiency, and such deficiency, together with the interest, additions
18 to tax and penalties stated in such notice, shall be deemed assessed on
19 the date such notice is mailed unless within thirty days after the mail-
20 ing of such notice a report of the federal or New York state change or
21 correction or an amended return, where such return was required by
22 section 11-519 of this chapter, is filed accompanied by a statement
23 showing wherein such federal or New York state determination and such
24 notice of additional tax due are erroneous.

25 (2) Such notice shall not be considered as a notice of deficiency for
26 the purposes of this section, subdivision (f) of section 11-527 of this
27 chapter, limiting credits or refunds after petition to the tax appeals
28 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
29 izing the filing of a petition with the tax appeals tribunal based on a
30 notice of deficiency, nor shall such assessment or collection thereof be
31 prohibited by the provisions of subdivision (c) of this section.

32 (3) If the taxpayer is deceased or under a legal disability, a notice
33 of additional tax due may be mailed to his or her last known address in
34 or out of the city, unless the commissioner of finance has received
35 notice of the existence of a fiduciary relationship with respect to the
36 taxpayer.

37 (f) Waiver of restrictions. The taxpayer shall at any time, whether or
38 not a notice of deficiency has been issued, have the right to waive the
39 restrictions on assessment and collection of the whole or any part of
40 the deficiency by a signed notice in writing filed with the commissioner
41 of finance.

42 (g) Deficiency defined. For purposes of this chapter, a deficiency
43 means the amount of the tax imposed by this chapter, less (i) the amount
44 shown as the tax upon the taxpayer's return, whether the return was made
45 or the tax computed by the taxpayer or by the commissioner of finance,
46 and less, (ii) the amounts previously assessed, or collected without
47 assessment, as a deficiency and plus (iii) the amount of any rebates.
48 For the purpose of this definition, the tax imposed by this chapter and
49 the tax shown on the return shall both be determined without regard to
50 payments on account of estimated tax; and a rebate means so much of an
51 abatement, credit, refund or other repayment, whether or not erroneous,
52 made on the ground that the amounts entering into the definition of a
53 deficiency showed a balance in favor of the taxpayer.

54 (h) Exception where change or correction of sales and compensating use
55 tax liability is not reported. (1) If a taxpayer fails to comply with
56 section 11-519.1 of this chapter in not reporting a change or correction

1 of his or her sales and compensating use tax liability or in not filing
2 a copy of an amended return or report relating to his or her sales and
3 compensating use tax liability, instead of the mode and time of assess-
4 ment provided for in subdivision (b) of this section, the commissioner
5 of finance may assess a deficiency based upon such changed or corrected
6 sales and compensating use tax liability, as same relates to credits
7 claimed under this chapter by mailing to the taxpayer a notice of addi-
8 tional tax due specifying the amount of the deficiency, and such defi-
9 ciency, together with the interest, additions to tax and penalties stat-
10 ed in such notice, shall be deemed assessed on the date such notice is
11 mailed unless within thirty days after the mailing of such notice a
12 report of the state change or correction or a copy of an amended return
13 or report, where such copy was required by section 11-519.1 of this
14 chapter, is filed accompanied by a statement showing where such state
15 determination and such notice of additional tax due are erroneous.

16 (2) Such notice shall not be considered as a notice of deficiency for
17 the purposes of this section, subdivision (f) of section 11-527 of this
18 chapter, limiting credits or refunds after petition to the tax appeals
19 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
20 izing the filing of a petition with the tax appeals tribunal based on a
21 notice of deficiency, nor shall such assessment or the collection there-
22 of be prohibited by the provisions of subdivision (c) of this section.

23 (3) If the taxpayer is deceased or under a legal disability, a notice
24 of additional tax due may be mailed to his or her last known address in
25 or out of the city, and such notice shall be sufficient for purposes of
26 this chapter. If the commissioner of finance has received notice that a
27 person is acting for the taxpayer in a fiduciary capacity, a copy of
28 such notice shall also be mailed to the fiduciary named in such notice.

29 § 11-522 Assessment. (a) Assessment date. The amount of tax which a
30 return shows to be due, or the amount of tax which a return would have
31 shown to be due but for a mathematical error, shall be deemed to be
32 assessed on the date of filing of the return, including any amended
33 return showing an increase of tax. In the case of a return properly
34 filed without computation of tax, the tax computed by the commissioner
35 of finance shall be deemed to be assessed on the date on which payment
36 is due. If a notice of deficiency has been mailed, the amount of the
37 deficiency shall be deemed to be assessed on the date specified in
38 subdivision (b) of section 11-521 of this chapter if no petition is both
39 served on the commissioner of finance and filed with the tax appeals
40 tribunal, or if a petition is filed, then upon the date when a decision
41 of the tax appeals tribunal establishing the amount of the deficiency
42 becomes final.

43 If an amended return or report filed pursuant to section 11-519 of
44 this chapter concedes the accuracy of a federal or New York state
45 adjustment, change or correction, any deficiency in tax under this chap-
46 ter resulting therefrom shall be deemed to be assessed on the date of
47 filing such report or amended return, and such assessment shall be time-
48 ly notwithstanding section 11-523 of this chapter.

49 If a report or amended return or report filed pursuant to section
50 11-519.1 of this chapter concedes the accuracy of a state change or
51 correction of sales and compensating use tax liability, any deficiency
52 in tax under this chapter resulting therefrom shall be deemed assessed
53 on the date of filing such report, and such assessment shall be timely
54 notwithstanding section 11-523 of this chapter.

55 If a notice of additional tax due, as prescribed in subdivision (e) of
56 section 11-521 of this chapter has been mailed, the amount of the defi-

1 deficiency shall be deemed to be assessed on the date specified in such
2 subdivision unless within thirty days after the mailing of such notice a
3 report of the federal or New York state change or correction or an
4 amended return, where such return was required by section 11-519 of this
5 chapter is filed accompanied by a statement showing wherein such federal
6 or New York state determination and such notice of additional tax due
7 are erroneous.

8 If a notice of additional tax due, as prescribed in subdivision (h) of
9 section 11-521 of this chapter, has been mailed, the amount of the defi-
10 ciency shall be deemed to be assessed on the date specified in such
11 subdivision unless within thirty days after the mailing of such notice a
12 report of the state change or correction, or a copy of an amended return
13 or report, where such copy was required by section 11-519.1 of this
14 chapter, is filed accompanied by a statement showing wherein such state
15 determination and such notice of additional tax due are erroneous.

16 Any amount paid as a tax or in respect of a tax, other than amounts
17 paid as estimated income tax, shall be deemed to be assessed upon the
18 date of receipt of payment, notwithstanding any other provisions.

19 (b) Other assessment powers. If the mode or time for the assessment of
20 any tax under this chapter, including interest, additions to tax and
21 assessable penalties, is not otherwise provided for, the commissioner of
22 finance may establish the same by regulations.

23 (c) Estimated income tax. No unpaid amount of estimated tax under
24 section one hundred sixteen shall be assessed.

25 (d) Supplemental assessment. The commissioner of finance may, at any
26 time within the period prescribed for assessment, make a supplemental
27 assessment, subject to the provisions of section 11-521 of this chapter
28 where applicable, whenever it is ascertained that any assessment is
29 imperfect or incomplete in any material respect.

30 (e) Cross-reference. For assessment in case of jeopardy, see section
31 11-534 of this chapter.

32 § 11-523 Limitations on assessment. (a) General. Except as otherwise
33 provided in this section, any tax under this chapter shall be assessed
34 within three years after the return was filed, whether or not such
35 return was filed on or after the date prescribed.

36 (b) Time return deemed filed. For purposes of this section a return
37 of tax filed before the last day prescribed by law or by regulations
38 promulgated pursuant to law for the filing thereof, shall be deemed to
39 be filed on such last day.

40 (c) Exceptions. (1) Assessment at any time. The tax may be assessed
41 at any time if:

42 (A) no return is filed,

43 (B) a false or fraudulent return is filed with intent to evade tax,

44 (C) the taxpayer fails to comply with section 11-519 of this chapter
45 in not reporting a change or correction increasing or decreasing the
46 taxpayer's federal or New York state taxable income as reported on the
47 taxpayer's federal or New York state income tax return, or the execution
48 of a notice of waiver and the changes or corrections on which it is
49 based or in not reporting a change or correction which is treated in the
50 same manner as if it were a deficiency for federal or New York state
51 income tax purposes, or in not filing an amended return, or

52 (D) the taxpayer fails to file a report or amended return or report
53 required under section 11-519.1 of this chapter, in respect of a change
54 or correction of sales and compensating use tax liability, relating to
55 the purchase or use of items for which a sales or compensating use tax
56 credit against the tax imposed by this chapter was claimed.

1 (2) Extension by agreement. Where, before the expiration of the time
2 prescribed in this section for the assessment of tax, both the commis-
3 sioner of finance and the taxpayer have consented in writing to its
4 assessment after such time, the tax may be assessed at any time prior to
5 the expiration of the period agreed upon. The period so agreed upon may
6 be extended by subsequent agreements in writing made before the expira-
7 tion of the period previously agreed upon.

8 (3) Report of changed or corrected federal or New York state income.
9 If the taxpayer shall, pursuant to section 11-519 of this chapter,
10 report a change or correction or file an amended return increasing or
11 decreasing federal or New York state taxable income or report the
12 execution of a notice of waiver and the changes and corrections on which
13 it is based, or a change or correction which is treated in the same
14 manner as if it were a deficiency for federal or New York state income
15 tax purposes, the assessment, if not deemed to have been made upon the
16 filing of the report or amended return, may be made at any time within
17 two years after such report or amended return was filed. The amount of
18 such assessment of tax shall not exceed the amount of the increase in
19 city tax attributable to such federal or New York state change or
20 correction. The provisions of this paragraph shall not affect the time
21 within which or the amount for which an assessment may otherwise be
22 made.

23 (4) Deficiency attributable to net operating loss carryback. If a
24 deficiency is attributable to the application to the taxpayer of a net
25 operating loss carryback, it may be assessed at any time that a defi-
26 ciency for the taxable year of the loss may be assessed.

27 (5) Recovery of erroneous refund. An erroneous refund shall be
28 considered an underpayment of tax on the date made, and an assessment of
29 a deficiency arising out of an erroneous refund may be made at any time
30 within two years from the making of the refund, except that the assess-
31 ment may be made within five years from the making of the refund if it
32 appears that any part of the refund was induced by fraud or misrepresen-
33 tation of a material fact.

34 (6) Request for prompt assessment. If a return is required for a
35 decedent or for his or her estate during the period of administration,
36 the tax shall be assessed within eighteen months after written request
37 therefor, made after the return is filed, by the executor, administrator
38 or other person representing the estate of such decedent, but not more
39 than three years after the return was filed, except as otherwise
40 provided in this subdivision and subdivision (d) of this section.

41 (7) Report on use of certain property. Under the circumstances
42 described in paragraph two of subdivision (b) of section 11-509 of this
43 chapter, the tax may be assessed within three years after the filing of
44 a return reporting that property has been used for purposes other than
45 research and development to a greater extent than originally reported.

46 (8) Report concerning waste treatment facility. Under the circum-
47 stances described in paragraph (i) of section 11-507 of this chapter,
48 the tax may be assessed within three years after the filing of the
49 return containing the information required by such paragraph.

50 (9) Report of changed or corrected sales and compensating use tax
51 liability. If the taxpayer files a report or amended return or report
52 required under section 11-519.1 of this chapter, in respect of a change
53 or correction of sales and compensating use tax liability, the assess-
54 ment, if not deemed to have been made upon the filing of the report, may
55 be made at any time within two years after such report or amended return
56 or report was filed. The amount of such assessment of tax shall not

1 exceed the amount of the increase in city tax attributable to such state
2 change or correction. The provisions of this paragraph shall not affect
3 the time within which or the amount for which an assessment may other-
4 wise be made.

5 (d) Omission of income on return. The tax may be assessed at any time
6 within six years after the return was filed if (1) a taxpayer omits from
7 his or her city unincorporated business gross income an amount properly
8 includible therein which is in excess of twenty-five per centum of the
9 amount of city unincorporated business gross income stated in the
10 return, or (2) an estate or trust omits income from its return in an
11 amount in excess of twenty-five percent of its income determined as if
12 it were an individual.

13 For purposes of this subdivision there shall not be taken into account
14 any amount which is omitted in the return if such amount is disclosed in
15 the return, or in a statement attached to the return, in a manner
16 adequate to apprise the commissioner of finance of the nature and amount
17 of such item.

18 (e) Suspension of running of period of limitation. The running of the
19 period of limitations on assessment or collection of tax or other
20 amount, or of a transferee's liability, shall, after the mailing of a
21 notice of deficiency, be suspended for the period during which the
22 commissioner of finance is prohibited under subdivision (c) of section
23 11-521 of this chapter from making the assessment or from collecting by
24 levy.

25 § 11-524 Interest on underpayment. (a) General. If any amount of tax
26 is not paid on or before the last date prescribed in this chapter for
27 payment, interest on such amount at the underpayment rate set by the
28 commissioner of finance pursuant to section 11-537 of this chapter, or,
29 if no rate is set, at the rate of seven and one-half percent per annum
30 shall be paid for the period from such last date to the date paid,
31 whether or not any extension of time for payment was granted. Interest
32 under this subdivision shall not be paid if the amount thereof is less
33 than one dollar.

34 (b) Exception as to estimated tax. This section shall not apply to
35 any failure to pay estimated tax under section 11-512 of this chapter.

36 (c) Exception for mathematical error. No interest shall be imposed on
37 any underpayment of tax due solely to mathematical error if the taxpayer
38 files a return within the time prescribed in this chapter, including any
39 extension of time, and pays the amount of underpayment within three
40 months after the due date of such return, as it may be extended.

41 (d) Suspension of interest on deficiencies. If a waiver of
42 restrictions on assessment of a deficiency has been filed by the taxpay-
43 er, and if notice and demand by the commissioner of finance for payment
44 of such deficiency is not made within thirty days after the filing of
45 such waiver, interest shall not be imposed on such deficiency for the
46 period beginning immediately after such thirtieth day and ending with
47 the date of notice and demand.

48 (e) Tax reduced by carryback. If the amount of tax for any taxable
49 year is reduced by reason of a carryback of a net operating loss, such
50 reduction in tax shall not affect the computation of interest under this
51 section for the period ending with the filing date for the taxable year
52 in which the net operating loss arises. Such filing date shall be deter-
53 mined without regard to extensions of time to file.

54 (f) Interest treated as tax. Interest under this section shall be
55 paid upon notice and demand and shall be assessed, collected and paid in
56 the same manner as tax. Any reference in this chapter to the tax

1 imposed by this chapter shall be deemed also to refer to interest
2 imposed by this section on such tax.

3 (g) Interest on penalties or additions to tax. Interest shall be
4 imposed under subdivision (a) of this section in respect of any assessa-
5 ble penalty or addition to tax only if such assessable penalty or addi-
6 tion to tax is not paid within ten days from the date of the notice and
7 demand therefor under subdivision (b) of section 11-532 of this chapter,
8 and in such case interest shall be imposed only for the period from such
9 date of the notice and demand to the date of payment.

10 (h) Payment within ten days after notice and demand. If notice and
11 demand is made for payment of any amount under subdivision (b) of
12 section 11-532 of this chapter, and if such amount is paid within ten
13 days after the date of such notice and demand, interest under this
14 section on the amount so paid shall not be imposed for the period after
15 the date of such notice and demand.

16 (i) Limitation on assessment and collection. Interest prescribed
17 under this section may be assessed and collected at any time during the
18 period within which the tax or other amount to which such interest
19 relates may be assessed and collected, respectively.

20 (j) Interest on erroneous refund. Any portion of tax or other amount
21 which has been erroneously refunded, and which is recoverable by the
22 commissioner of finance, shall bear interest at the underpayment rate
23 set by the commissioner of finance pursuant to section 11-537 of this
24 chapter, or, if no rate is set, at the rate of seven and one-half
25 percent per annum from the date of the payment of the refund, but only
26 if it appears that any part of the refund was induced by fraud or a
27 misrepresentation of a material fact.

28 (k) Satisfaction by credits. If any portion of a tax is satisfied by
29 credit of an overpayment, then no interest shall be imposed under this
30 section on the portion of the tax so satisfied for any period during
31 which, if the credit had not been made, interest would have been allow-
32 able with respect to such overpayment.

33 § 11-525 Additions to tax and civil penalties. (a) (1) Failure to
34 file tax return. (A) In case of failure to file a tax return under this
35 chapter on or before the prescribed date, determined with regard to any
36 extension of time for filing, unless it is shown that such failure is
37 due to reasonable cause and not due to willful neglect, there shall be
38 added to the amount required to be shown as tax on such return five
39 percent of the amount of such tax if the failure is for not more than
40 one month, with an additional five percent for each additional month or
41 fraction thereof during which such failure continues, not exceeding
42 twenty-five percent in the aggregate.

43 (B) In the case of a failure to file a tax return within sixty days of
44 the date prescribed for filing of such return, determined with regard to
45 any extension of time for filing, unless it is shown that such failure
46 is due to reasonable cause and not due to willful neglect, the addition
47 to tax under subparagraph (A) of this paragraph shall not be less than
48 the lesser of one hundred dollars or one hundred percent of the amount
49 required to be shown as tax on such return.

50 (C) For purposes of this paragraph, the amount of tax required to be
51 shown on the return shall be reduced by the amount of any part of the
52 tax which is paid on or before the date prescribed for payment of the
53 tax and by the amount of any credit against the tax which may be claimed
54 upon the return.

55 (2) Failure to pay tax shown on return. In case of failure to pay the
56 amounts shown as tax on any return required to be filed under this chap-

1 ter on or before the prescribed date, determined with regard to any
2 extension of time for payment, unless it is shown that such failure is
3 due to reasonable cause and not due to willful neglect, there shall be
4 added to the amount shown as tax on such return one-half of one percent
5 of the amount of such tax if the failure is not for more than one month,
6 with an additional one-half of one percent for each additional month or
7 fraction thereof during which such failure continues, not exceeding
8 twenty-five percent in the aggregate. For the purpose of computing the
9 addition for any month, the amount of tax shown on the return shall be
10 reduced by the amount of any part of the tax which is paid on or before
11 the beginning of such month and by the amount of any credit against the
12 tax which may be claimed upon the return. If the amount of tax required
13 to be shown on a return is less than the amount shown as tax on such
14 return, this paragraph shall be applied by substituting such lower
15 amount.

16 (3) Failure to pay tax required to be shown on return. In case of
17 failure to pay any amount in respect of any tax required to be shown on
18 a return required to be filed under this chapter which is not so shown,
19 including an assessment made pursuant to subdivision (a) of section
20 11-522 of this chapter, within ten days of the date of a notice and
21 demand therefor, unless it is shown that such failure is due to reason-
22 able cause and not due to willful neglect, there shall be added to the
23 amount of tax stated in such notice and demand one-half of one percent
24 of such tax if the failure is not for more than one month, with an addi-
25 tional one-half of one percent for each additional month or fraction
26 thereof during which such failure continues, not exceeding twenty-five
27 percent in the aggregate. For the purpose of computing the addition for
28 any month, the amount of tax stated in the notice and demand shall be
29 reduced by the amount of any part of the tax which is paid before the
30 beginning of such month.

31 (4) Limitations on additions. (A) With respect to any return the
32 amount of the addition under paragraph one of this subdivision shall be
33 reduced by the amount of the addition under paragraph two of this subdivi-
34 sion for any month to which an addition applies under both paragraphs
35 one and two of this subdivision. In any case described in subparagraph
36 (B) of paragraph one of this subdivision, the amount of the addition
37 under such paragraph one shall not be reduced below the amount provided
38 in such subparagraph.

39 (B) With respect to any return, the maximum amount of the addition
40 permitted under paragraph three of this subdivision shall be reduced by
41 the amount of the addition under paragraph one of this subdivision,
42 determined without regard to subparagraph (B) of such paragraph one,
43 which is attributable to the tax for which the notice and demand is made
44 and which is not paid within ten days of such notice and demand.

45 (b) Deficiency due to negligence. (1) If any part of a deficiency is
46 due to negligence or intentional disregard of this chapter or rules or
47 regulations hereunder, but without intent to defraud, there shall be
48 added to the tax an amount equal to five percent of the deficiency.

49 (2) There shall be added to the tax, in addition to the amount deter-
50 mined under paragraph one of this subdivision, an amount equal to fifty
51 percent of the interest payable under subdivision (a) of section 11-524
52 with respect to the portion of the deficiency described in such para-
53 graph one which is attributable to the negligence or intentional disre-
54 gard referred to in such paragraph one, for the period beginning on the
55 last date prescribed by law for payment of such deficiency, determined

1 without regard to any extension, and ending on the date of the assess-
2 ment of the tax, or, if earlier, the date of the payment of the tax.

3 (3) If any payment is shown on a return made by a payor with respect
4 to dividends, patronage dividends and interest under subsection (a) of
5 section six thousand forty-two, subsection (a) of section six thousand
6 forty-four or subsection (a) of section six thousand forty-nine of the
7 internal revenue code of nineteen hundred fifty-four, respectively, and
8 the payee fails to include any portion of such payment in unincorporated
9 business gross income, as that term is defined in section 11-506, any
10 portion of a deficiency attributable to such failure shall be treated,
11 for purposes of this subdivision, as due to negligence in the absence of
12 clear and convincing evidence to the contrary. If any addition to tax is
13 imposed under this subdivision by reason of this paragraph, the amount
14 of the addition to tax imposed by paragraph one of this subdivision
15 shall be five percent of the portion of the deficiency which is attrib-
16 utable to the failure described in this paragraph.

17 (c) Failure to file declaration or underpayment of estimated tax. If
18 any taxpayer fails to file a declaration of estimated tax or fails to
19 pay all or any part of an installment of estimated tax, the taxpayer
20 shall be deemed to have made an underpayment of estimated tax. There
21 shall be added to the tax for the taxable year an amount at the under-
22 payment rate set by the commissioner of finance pursuant to section
23 11-537 of this chapter, or, if no rate is set, at the rate of seven and
24 one-half percent per annum upon the amount of the underpayment for the
25 period of the underpayment but not beyond the fifteenth day of the
26 fourth month following the close of the taxable year. The amount of the
27 underpayment shall be the excess of the amount of the installment which
28 would be required to be paid if the estimated tax were equal to ninety
29 percent of the tax shown on the return for the taxable year, or if no
30 return was filed, ninety percent of the tax for such year, over the
31 amount, if any, of the installment paid on or before the last day
32 prescribed for such payment. No underpayment shall be deemed to exist
33 with respect to a declaration or installment otherwise due on or after
34 the taxpayer's death. In any case in which there would be no underpay-
35 ment if this subdivision were applied by substituting "eighty percent"
36 for "ninety percent" where it appears in this subdivision, the addition
37 to tax under this subdivision shall be equal to seventy-five percent of
38 the amount otherwise determined under this subdivision.

39 (d) Exception to addition for underpayment of estimated tax. The addi-
40 tion to tax under subdivision (c) of this section with respect to any
41 underpayment of any installment shall not be imposed if the total amount
42 of all payments of estimated tax made on or before the last date
43 prescribed for the payment of such installment equals or exceeds which-
44 ever of the following is the lesser:

45 (1) The amount which would have been required to be paid on or before
46 such date if the estimated tax were whichever of the following is the
47 least:

48 (A) The tax shown on the return of the taxpayer for the preceding
49 taxable year, if a return showing a liability for tax was filed by the
50 taxpayer for the preceding taxable year and such preceding year was a
51 taxable year of twelve months, or

52 (B) An amount equal to the tax computed, at the rates applicable to
53 the taxable year, but otherwise on the basis of the facts shown on the
54 taxpayer's return for, and the law applicable to, the preceding taxable
55 year, or

1 (C) An amount equal to ninety percent of the tax for the taxable year
2 computed by placing on an annualized basis the unincorporated business
3 taxable income for the months in the taxable year ending before the
4 month in which the installment is required to be paid. For purposes of
5 this subparagraph, the unincorporated business taxable income shall be
6 placed on an annualized basis by:

7 (i) multiplying by twelve, or, in the case of a taxable year of less
8 than twelve months, the number of months in the taxable year, the unincorporated business taxable income for the months in the taxable year
9 ending before the month in which the installment is required to be paid,
10 and
11

12 (ii) dividing the resulting amount by the number of months in the
13 taxable year ending before the month in which such installment date
14 falls, or

15 (D)(i) If the base period percentage for any six consecutive months of
16 the taxable year equals or exceeds seventy percent, an amount equal to
17 ninety percent of the tax determined in the following manner:

18 (I) take the unincorporated business taxable income for all months
19 during the taxable year preceding the filing month,

20 (II) divide such amount by the base period percentage for all months
21 during the taxable year preceding the filing month,

22 (III) determine the tax on the amounts determined under subclause (II)
23 of this clause, and

24 (IV) multiply the tax determined under subclause (III) of this clause
25 by the base period percentage for the filing month and all months during
26 the taxable year preceding the filing month.

27 (ii) For purposes of clause (i) of this subparagraph:

28 (I) the base period percentage for any period of months shall be the
29 average percent which the unincorporated business taxable income for the
30 corresponding months in each of the three preceding years bears to the
31 unincorporated business taxable income for the three preceding taxable
32 years. The commissioner of finance may by regulations provide for the
33 determination of the base period percentage in the case of new unincorporated businesses and other similar circumstances, and

34 (II) the term "filing month" means the month in which the installment
35 is required to be paid;

36 (2) An amount equal to ninety percent of the tax computed, at the
37 rates applicable to the taxable year, on the basis of the actual unincorporated business taxable income for the months in the taxable year
38 ending before the month in which the installment is required to be paid.

39 (e)(1) Except as provided in paragraph two of this subdivision,
40 subparagraphs (A) and (B) of paragraph one of subdivision (d) of this
41 section shall not apply in the case of any taxpayer which had unincorporated business taxable income, or the portion thereof allocated within
42 the city, of one million dollars or more for any taxable year during the
43 three taxable years immediately preceding the taxable year involved.

44 (2) The amount treated as the estimated tax under subparagraphs (A)
45 and (B) of paragraph one of subdivision (d) of this section shall in no
46 event be less than seventy-five percent of the tax shown on the return
47 for the taxable year beginning in nineteen hundred eighty-three or, if
48 no return was filed, seventy-five percent of the tax for such year.

49 (f) Deficiency due to fraud. (1) If any part of a deficiency is due to
50 fraud, there shall be added to the tax an amount equal to two times of
51 the deficiency.

52 (2) The addition to tax under this subdivision shall be in lieu of any
53 other addition to tax imposed by subdivision (a) or (b) of this section.
54
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56

1 (g) Additional penalty. Any taxpayer who with fraudulent intent shall
2 fail to pay any tax, or to make, render, sign or certify any return or
3 declaration of estimated tax, or to supply any information within the
4 time required by or under this chapter shall be liable to a penalty of
5 not more than one thousand dollars, in addition to any other amounts
6 required under this chapter, to be imposed, assessed and collected by
7 the commissioner of finance. The commissioner of finance shall have the
8 power, in his or her discretion, to waive, reduce or compromise any
9 penalty under this subdivision.

10 (h) Additions treated as tax. The additions to tax and penalties
11 provided by this section shall be paid upon notice and demand and shall
12 be assessed, collected and paid in the same manner as taxes, and any
13 reference in this chapter to tax or tax imposed by this chapter, shall
14 be deemed also to refer to the additions to tax and penalties provided
15 by this section. For purposes of section 11-521, this subdivision shall
16 not apply to:

17 (1) any addition to tax under subdivision (a) of this section except
18 as to that portion attributable to a deficiency;

19 (2) any addition to tax under subdivision (c) of this section; and

20 (3) any additional penalties under subdivisions (g) and (k) of this
21 section.

22 (i) Determination of deficiency. For purposes of subdivisions (b) and
23 (c) of this section, the amounts shown as the tax by the taxpayer upon
24 his or her return shall be taken into account in determining the amount
25 of the deficiency only if such return was filed on or before the last
26 day prescribed for the filing of such return, determined with regard to
27 any extension of time for such filing.

28 (j) Substantial understatement of liability. If there is a substantial
29 understatement of tax for any taxable year, there shall be added to the
30 tax an amount equal to ten percent of the amount of any underpayment
31 attributable to such understatement. For purposes of this subdivision,
32 there is a substantial understatement of tax for any taxable year if the
33 amount of the understatement for the taxable year exceeds the greater of
34 ten percent of the tax required to be shown on the return for the taxa-
35 ble year, or five thousand dollars. For purposes of the this subdivi-
36 sion, the term "understatement" means the excess of the amount of the
37 tax required to be shown on the return for the taxable year, over the
38 amount of the tax imposed which is shown on the return, reduced by any
39 rebate, within the meaning of subdivision (g) of section 11-521 of this
40 chapter. The amount of such understatement shall be reduced by that
41 portion of the understatement which is attributable to the tax treatment
42 of any item by the taxpayer if there is or was substantial authority for
43 such treatment, or any item with respect to which the relevant facts
44 affecting the item's tax treatment are adequately disclosed in the
45 return or in a statement attached to the return. The commissioner of
46 finance may waive all or any part of the addition to tax provided by
47 this subdivision on a showing by the taxpayer that there was reasonable
48 cause for the understatement, or part thereof, and that the taxpayer
49 acted in good faith.

50 (k) Aiding or assisting in the giving of fraudulent returns, reports,
51 statements or other documents. (1) Any person who, with the intent that
52 tax be evaded, shall, for a fee or other compensation or as an incident
53 to the performance of other services for which such person receives
54 compensation, aid or assist in, or procure, counsel, or advise the prep-
55 aration or presentation under, or in connection with any matter arising
56 under this chapter of any return, report, declaration, statement or

1 other document which is fraudulent or false as to any material matter,
2 or supply any false or fraudulent information, whether or not such
3 falsity or fraud is with the knowledge or consent of the person author-
4 ized or required to present such return, report, declaration, statement
5 or other document shall pay a penalty not exceeding ten thousand
6 dollars.

7 (2) For purposes of paragraph one of this subdivision, the term
8 "procures" includes ordering, or otherwise causing, a subordinate to do
9 an act, and knowing of, and not attempting to prevent, participation by
10 a subordinate in an act. The term "subordinate" means any other person,
11 whether or not a member, employee, or agent of the taxpayer involved,
12 over whose activities the person has direction, supervision, or control.

13 (3) For purposes of paragraph one of this subdivision, a person
14 furnishing typing, reproducing, or other mechanical assistance with
15 respect to a document shall not be treated as having aided or assisted
16 in the preparation of such document by reason of such assistance.

17 (4) The penalty imposed by this subdivision shall be in addition to
18 any other penalty provided by law.

19 (1) False or fraudulent document penalty. Any taxpayer that submits a
20 false or fraudulent document to the department shall be subject to a
21 penalty of one hundred dollars per document submitted, or five hundred
22 dollars per tax return submitted. Such penalty shall be in addition to
23 any other penalty or addition provided by law.

24 § 11-526 Overpayment. (a) General. The commissioner of finance,
25 within the applicable period of limitations, may credit an overpayment
26 of tax and interest on such overpayment against any liability in respect
27 of any tax imposed by this title, on the person who made overpayment,
28 and the balance shall be refunded. Such credit of an overpayment shall
29 be applied before such overpayment, or any portion thereof, is paid to
30 the state commissioner of taxation and finance pursuant to section one
31 hundred seventy-one-m of the tax law.

32 (b) Credits against estimated tax. The commissioner of finance may
33 prescribe regulations providing for the crediting against the estimated
34 tax for any taxable year of the amount determined to be an overpayment
35 of the tax for a preceding taxable year. If any overpayment of tax is
36 so claimed as a credit against estimated tax for the succeeding taxable
37 year, such amount shall be considered as a payment of the tax for the
38 succeeding taxable year, whether or not claimed as a credit in the
39 declaration of estimated tax for such succeeding taxable year, and no
40 claim for credit or refund of such overpayment shall be allowed for the
41 taxable year for which the overpayment arises.

42 (c) Rule where no tax liability. If there is no tax liability for a
43 period in respect of which an amount is paid as tax, such amount shall
44 be considered an overpayment.

45 (d) Assessment and collection after limitation period. If any amount
46 of income tax is assessed or collected after the expiration of the peri-
47 od of limitations properly applicable thereto, such amount shall be
48 considered an overpayment.

49 (e) Notwithstanding any provision of law in article fifty-two of the
50 civil practice law and rules to the contrary, the procedures for the
51 enforcement of money judgments shall not apply to the department of
52 finance, or to any officer or employee of the department of finance, as
53 a garnishee, with respect to any amount of money to be refunded or cred-
54 ited to a taxpayer under this chapter.

55 § 11-527 Limitation on credit or refund. (a) General. Claim for credit
56 or refund of an overpayment of tax shall be filed by the taxpayer within

1 three years from the time the return was filed or two years from the
2 time the tax was paid, whichever of such periods expires the later, or
3 if no return was filed, within two years from the time the tax was paid.
4 If the claim is filed within the three year period, the amount of the
5 credit or refund shall not exceed the portion of the tax paid within the
6 three years immediately preceding the filing of the claim plus the peri-
7 od of any extension of time for filing the return. If the claim is not
8 filed within the three year period, but is filed within the two year
9 period, the amount of the credit or refund shall not exceed the portion
10 of the tax paid during the two years immediately preceding the filing of
11 the claim. Except as otherwise provided in this section, if no claim is
12 filed, the amount of a credit or refund shall not exceed the amount
13 which would be allowable if a claim had been filed on the date the cred-
14 it or refund is allowed.

15 (b) Extension of time by agreement. If an agreement under the
16 provisions of paragraph two of subdivision (c) of section 11-523 of this
17 chapter, extending the period for assessment of income tax, is made
18 within the period prescribed in subdivision (a) of this section for the
19 filing of a claim for credit or refund the period for filing a claim for
20 credit or refund, or for making credit or refund if no claims filed,
21 shall not expire prior to six months after the expiration of the period
22 within which an assessment may be made pursuant to the agreement or any
23 extension thereof. The amount of such credit or refund shall not exceed
24 the portion of the tax paid after the execution of the agreement and
25 before the filing of the claim or the making of the credit or refund, as
26 the case may be, plus the portion of the tax paid within the period
27 which would be applicable under subdivision (a) of this section if a
28 claim had been filed on the date the agreement was executed.

29 (c) Notice of change or correction of federal or New York state taxa-
30 ble income. If a taxpayer is required by section 11-519 of this chapter
31 to report a change or correction in federal or New York state taxable
32 income reported on the taxpayer's federal or New York state income tax
33 return, or to report a change or correction which is treated in the same
34 manner as if it were an overpayment for federal or New York state income
35 tax purposes, or to file an amended return with the commissioner of
36 finance, claim for credit or refund of any resulting overpayment of tax
37 shall be filed by the taxpayer within two years from the time the notice
38 of such change or correction or such amended return was required to be
39 filed with the commissioner of finance. If the report or amended return
40 required by section 11-519 of this chapter is not filed within the nine-
41 ty day period therein specified, no interest shall be payable on any
42 claim for credit or refund of the overpayment attributable to the feder-
43 al or New York state change or correction. The amount of such credit or
44 refund shall not exceed the amount of the reduction in tax attributable
45 to such federal or New York state change, correction or items amended on
46 the taxpayer's amended federal or New York state income tax return. This
47 subdivision shall not affect the time within which or the amount for
48 which a claim for credit or refund may be filed apart from this subdivi-
49 sion.

50 (d) Overpayment attributable to net operating loss carryback. A claim
51 for credit or refund of so much of an overpayment as is attributable to
52 the application to the taxpayer of a net operating loss carryback shall
53 be filed within three years from the time the return was due for the
54 taxable year of the loss, or within the period prescribed in subdivision
55 (b) of this section in respect of such taxable year, or within the peri-
56 od prescribed in subdivision (c) of this section, where applicable in

1 respect of the taxable year to which the net operating loss is carried
2 back, whichever expires the latest.

3 (e) Failure to file claim within prescribed period. No credit or
4 refund shall be allowed or made, except as provided in subdivision (f)
5 of this section or subdivision (d) of section 11-530 of this chapter
6 after the expiration of the applicable period of limitation specified in
7 this chapter unless a claim for credit or refund is filed by the taxpay-
8 er within such period. Any later credit shall be void and any later
9 refund erroneous. No period of limitations specified in any other law
10 shall apply to the recovery by a taxpayer of moneys paid in respect of
11 taxes under this chapter.

12 (f) Effect of petition to tax appeals tribunal. If a notice of defi-
13 ciency for a taxable year has been mailed to the taxpayer under section
14 11-521 of this chapter and if the taxpayer files a timely petition with
15 the tax appeals tribunal under section 11-529 of this chapter, the tax
16 appeals tribunal may determine that the taxpayer has made an overpayment
17 for such year, whether or not it also determines a deficiency for such
18 year. No separate claim for credit or refund for such year shall be
19 filed, and no credit or refund for such year shall be allowed or made,
20 except:

21 (1) as to overpayments determined by a decision of the tax appeals
22 tribunal which has become final;

23 (2) as to any amount collected in excess of an amount computed in
24 accordance with the decision of the tax appeals tribunal which has
25 become final;

26 (3) as to any amount collected after the period of limitation upon the
27 making of levy for collection has expired; and

28 (4) as to any amount claimed as a result of a change or correction
29 described in subdivision (c) of this section.

30 (g) Limit on amount of credit or refund. The amount of overpayment
31 determined under subdivision (f) of this section shall, when the deci-
32 sion of the tax appeals tribunal has become final, be credited or
33 refunded in accordance with subdivision (a) of section 11-526 of this
34 chapter and shall not exceed the amount of tax which the tax appeals
35 tribunal determines as part of its decision was paid:

36 (1) after the mailing of the notice of deficiency, or

37 (2) within the period which would be applicable under subdivision (a),
38 (b) or (c) of this section, if on the date of the mailing of the notice
39 of deficiency a claim has been filed, whether or not filed, stating the
40 grounds upon which the tax appeals tribunal finds that there is an over-
41 payment.

42 (h) Early return. For purposes of this section, any return filed
43 before the last day prescribed for the filing thereof shall be consid-
44 ered as filed on such last day, determined without regard to any exten-
45 sion of time granted the taxpayer.

46 (i) Prepaid tax. For purposes of this section, any tax paid by the
47 taxpayer before the last day prescribed for its payment and any amount
48 paid by the taxpayer as estimated tax for a taxable year shall be deemed
49 to have been paid by the taxpayer on the fifteenth day of the fourth
50 month following the close of his or her taxable year with respect to
51 which such amount constitutes a credit or payment, except that for taxa-
52 ble years beginning on or after January first, two thousand sixteen, in
53 the case of a taxpayer classified as a partnership for federal income
54 tax purposes, such amount shall be deemed to have been paid on the
55 fifteenth day of the third month following the close of his or her taxa-

1 ble year with respect to which such amount constitutes a credit or
2 payment.

3 (j) Cross reference. For provision barring refund of overpayment cred-
4 ited against tax of a succeeding year, see subdivision (d) of section
5 11-526 of this chapter.

6 (k) Notice of change or correction of sales and compensating use tax
7 liability. If a taxpayer is required by section 11-519.1 of this chapter
8 to file a report or amended return or report in respect of a change or
9 correction of his or her sales and compensating use tax liability, claim
10 for credit or refund of any resulting overpayment of tax shall be filed
11 by the taxpayer within two years from the time such report or amended
12 return or report was required to be filed with the commissioner of
13 finance. The amount of such credit or refund shall be computed without
14 change of the allocation of income upon which the taxpayer's return, or
15 any additional assessment, was based, and shall not exceed the amount of
16 the reduction in tax attributable to such change or correction of sales
17 and compensating use tax liability.

18 This subdivision shall not affect the time within which or the amount
19 for which a claim for credit or refund may be filed apart from this
20 subdivision.

21 § 11-528 Interest on overpayment. (a) General. Notwithstanding the
22 provisions of section three-a of the general municipal law, interest
23 shall be allowed and paid as follows at the overpayment rate set by the
24 commissioner of finance pursuant to section 11-537 of this chapter, or,
25 if no rate is set, at the rate of six percent per annum upon any over-
26 payment in respect of the tax imposed by this chapter:

27 (1) from the date of the overpayment to the due date of an amount
28 against which a credit is taken; or

29 (2) from the date of the overpayment to a date, to be determined by
30 the commissioner of finance, preceding the date of a refund check by not
31 more than thirty days, whether or not such refund check is accepted by
32 the taxpayer after tender of such check to the taxpayer. The acceptance
33 of such check shall be without prejudice to any right of the taxpayer to
34 claim any additional overpayment and interest thereon.

35 (3) Late and amended returns and claims for credit or refund.
36 Notwithstanding paragraph one or two of this subdivision, in the case of
37 an overpayment claimed on a return of tax which is filed after the last
38 date prescribed for filing such return, determined with regard to exten-
39 sions, or claimed on an amended return of tax or claimed on a claim, for
40 credit or refund, no interest shall be allowed or paid for any day
41 before the date on which such return or claim is filed.

42 (4) Interest on certain refunds. To the extent provided for in regu-
43 lations promulgated by the commissioner of finance, if an item of
44 income, gain, loss, deduction or credit is changed from the taxable year
45 or period in which it is reported to the taxable year or period in which
46 it belongs and the change results in an underpayment in a taxable year
47 or period and an overpayment in some other taxable year or period, the
48 provisions of paragraph three of this subdivision with respect to an
49 overpayment shall not be applicable to the extent that the limitation in
50 such paragraph on the right to interest would result in a taxpayer not
51 being allowed interest for a length of time with respect to an overpay-
52 ment while being required to pay interest on an equivalent amount of the
53 related underpayment. However, this paragraph shall not be construed as
54 limiting or mitigating the effect of any statute of limitations or any
55 other provisions of law relating to the authority of such commissioner

1 to issue a notice of deficiency or to allow a credit or refund of an
2 overpayment.

3 (5) Amounts of less than one dollar. No interest shall be allowed or
4 paid if the amount thereof is less than one dollar.

5 (b) Advance payment of tax and payment of estimated tax. The
6 provisions of subdivisions (h) and (i) of section 11-527 of this chapter
7 applicable in determining the date of payment of tax for purposes of
8 determining the period of limitations on credit or refund, shall be
9 applicable in determining the date of payment for purposes of this
10 section.

11 (c) Refund within three months of claim for overpayment. If any over-
12 payment of tax imposed by this chapter is credited or refunded within
13 three months after the last date prescribed, or permitted by extension
14 of time, for filing the return of such tax on which such overpayment was
15 claimed or within three months after such return was filed, whichever is
16 later, or within three months after an amended return was filed claiming
17 such overpayment or within three months after a claim for credit or
18 refund was filed on which such overpayment was claimed, no interest
19 shall be allowed under this section on any such overpayment. For
20 purposes of this subdivision, any amended return or claim for credit or
21 refund filed before the last day prescribed, or permitted by extension
22 of time, for the filing of the return of tax for such year shall be
23 considered as filed on such last day.

24 (d) Refund of tax caused by carryback. For purposes of this section,
25 if any overpayment of tax imposed by this chapter results from a carry-
26 back of a net operating loss, such overpayment shall be deemed not to
27 have been made prior to the filing date for the taxable year in which
28 such net operating loss arises. Such filing date shall be determined
29 without regard to extensions of time to file. For purposes of subdivi-
30 sion (c) of this section any overpayment described herein shall be
31 treated as an overpayment for the loss year and such subdivision shall
32 be applied with respect to such overpayment by treating the return for
33 the loss year as not filed before claim for such overpayment is filed.
34 The term "loss year" means the taxable year in which such loss arises.

35 (e) No interest until return in processible form. (1) For purposes of
36 subdivisions (a) and (c) of this section, a return shall not be treated
37 as filed until it is filed in processible form.

38 (2) For purposes of paragraph one of this subdivision, a return is in
39 a processible form if:

40 (A) such return is filed on a permitted form, and

41 (B) such return contains:

42 (i) the taxpayer's name, address, and identifying number and the
43 required signatures, and

44 (ii) sufficient required information, whether on the return or on
45 required attachments, to permit the mathematical verification of tax
46 liability shown on the return.

47 (f) Cross-reference. For provision with respect to interest after
48 failure to file notice of federal or New York state change under section
49 11-519 of this chapter, see subdivision (c) of section 11-527 of this
50 chapter.

51 § 11-529 Petition to tax appeals tribunal. (a) General. The form of a
52 petition to the tax appeals tribunal, and further proceedings before the
53 tax appeals tribunal in any case initiated by the filing of a petition,
54 shall be governed by such rules as the tax appeals tribunal shall
55 prescribe. No petition shall be denied in whole or in part without
56 opportunity for a hearing on reasonable prior notice. Such hearing and

1 any appeal to the tribunal sitting en banc from the decision rendered in
2 such hearing shall be conducted in the manner and subject to the
3 requirements prescribed by the tax appeals tribunal pursuant to sections
4 one hundred sixty-eight through one hundred seventy-two of the charter
5 of the preceding municipality as it existed January first, nineteen
6 hundred ninety-four. A decision of the tax appeals tribunal shall be
7 rendered, and notice thereof shall be given, in the manner provided by
8 section one hundred seventy-one of the charter of the preceding munici-
9 pality.

10 (b) Petition for redetermination of a deficiency. Within ninety days,
11 or one hundred fifty days if the notice is addressed to a person outside
12 of the United States, after the mailing of the notice of deficiency
13 authorized by section 11-521 of this chapter, or if the commissioner of
14 finance has established a conciliation procedure pursuant to section
15 11-124 of this title and the taxpayer has requested a conciliation
16 conference in accordance therewith, within ninety days from the mailing
17 of the conciliation decision or the date of the commissioner's confirma-
18 tion of the discontinuance of the conciliation proceeding, the taxpayer
19 may file a petition with the tax appeals tribunal for a redetermination
20 of the deficiency. Such petition may also assert a claim for refund for
21 the same taxable year or years, subject to the limitations of subdivi-
22 sion (g) of section 11-527 of this chapter.

23 (c) Petition for refund. A taxpayer may file a petition with the tax
24 appeals tribunal for the amounts asserted in a claim for refund if:

25 (1) the taxpayer has filed a timely claim for refund with the commis-
26 sioner of finance,

27 (2) the taxpayer has not previously filed with the tax appeals tribu-
28 nal a timely petition under subdivision (b) of this section for the same
29 taxable year unless the petition under this subdivision relates to a
30 separate claim for credit or refund properly filed under subdivision (f)
31 of section 11-527 of this chapter, and

32 (3) either: (A) six months have expired since the claim was filed, or
33 (B) the commissioner of finance has mailed to the taxpayer, by regis-
34 tered or certified mail, a notice of disallowance of such claim in whole
35 or in part. No petition under this subdivision shall be filed more than
36 two years after the date of mailing of a notice of disallowance, unless
37 prior to the expiration of such two year period it has been extended by
38 written agreement between the taxpayer and the commissioner of finance.
39 If a taxpayer files a written waiver of the requirement that he or she
40 be mailed a notice of disallowance, the two year period prescribed by
41 this subdivision for filing a petition for refund shall begin on the
42 date such waiver is filed.

43 (4) If the commissioner of finance has established a conciliation
44 procedure pursuant to section 11-124 of this title, a taxpayer who is
45 eligible to file a petition for refund with the tax appeals tribunal
46 pursuant to this subdivision may request a conciliation conference prior
47 to filing such petition, provided the request is made within the time
48 prescribed for filing the petition. Notwithstanding anything in this
49 subdivision to the contrary, if the taxpayer has requested a concil-
50 iation conference in accordance with the procedure established pursuant
51 to section 11-124 of this title, a petition for refund may be filed no
52 later than ninety days from the mailing of the conciliation decision or
53 the date of the commissioner's confirmation of the discontinuance of the
54 conciliation proceeding.

55 (d) Assertion of deficiency after filing petition. (1) Petition for
56 redetermination of deficiency. If a taxpayer files with the tax appeals

1 tribunal a petition for redetermination of a deficiency, the tax appeals
2 tribunal shall have power to determine a greater deficiency than
3 asserted in the notice of deficiency and to determine if there should be
4 assessed any addition to tax or penalty provided in section 11-525 of
5 this chapter, if claim therefor is asserted at or before the hearing
6 under the rules of the tax appeals tribunal.

7 (2) Petition for refund. If the taxpayer files with the tax appeals
8 tribunal a petition for credit or refund for a taxable year, the tax
9 appeals tribunal may:

10 (A) determine a deficiency for such year as to any amount of deficien-
11 cy asserted at or before the hearing under rules of the tax appeals
12 tribunal, and within the period in which an assessment would be timely
13 under section 11-523 of this chapter, or

14 (B) deny so much of the amount for which credit or refund is sought in
15 the petition, as is offset by other issues pertaining to the same taxa-
16 ble year which are asserted at or before the hearing under rules of the
17 tax appeals tribunal.

18 (3) Opportunity to respond. A taxpayer shall be given a reasonable
19 opportunity to respond to any matters asserted by the commissioner of
20 finance under this subdivision.

21 (4) Restriction on further notices of deficiency. If the taxpayer
22 files a petition with the tax appeals tribunal under this section, no
23 notice of deficiency under section 11-521 of this chapter may thereafter
24 be issued by the commissioner of finance for the same taxable year,
25 except in case of fraud or with respect to a change or correction in
26 federal or New York state taxable income required to be reported under
27 section 11-519 of this chapter or with respect to a state change or
28 correction of sales and compensating use tax liability to be reported
29 under section 11-519.1 of this chapter.

30 (e) Burden of proof. In any case before the tax appeals tribunal under
31 this chapter, the burden of proof shall be upon the petitioner except
32 for the following issues, as to which the burden of proof shall be upon
33 the commissioner of finance:

34 (1) whether the petitioner has been guilty of fraud with intent to
35 evade tax;

36 (2) whether the petitioner is liable as the transferee of property of
37 a taxpayer, but not to show that the taxpayer was liable for the tax;

38 (3) whether the petitioner is liable for any increase in a deficiency
39 where such increase is asserted initially after a notice of deficiency
40 was mailed and a petition under this section filed, unless such increase
41 in deficiency is the result of a change or correction of federal or New
42 York state taxable income required to be reported under section 11-519
43 of this chapter, and of which change or correction the commissioner of
44 finance had no notice at the time he or she mailed the notice of defi-
45 ciency or unless such increase in deficiency is the result of a change
46 or correction of sales and compensating use tax liability required to be
47 reported under section 11-519.1 of this title, and of which change or
48 correction the commissioner of finance had no notice at the time he or
49 she mailed the notice of deficiency; and

50 (4) whether any person is liable for a penalty under subdivision (k)
51 of section 11-525 of this chapter.

52 (f) Evidence of related federal or state determination. Evidence of a
53 federal or state determination relating to issues raised in a case
54 before the tax appeals tribunal under this section shall be admissible,
55 under rules established by the tax appeals tribunal.

1 (g) Jurisdiction over other years. The tax appeals tribunal shall
2 consider such facts with relation to the taxes for other years as may be
3 necessary correctly to determine the tax for the taxable year, but in so
4 doing shall have no jurisdiction to determine whether or not the tax for
5 any other year has been overpaid or underpaid.

6 § 11-530 Review of tax appeals tribunal's decision. (a) General. A
7 decision of the tax appeals tribunal sitting en banc shall be subject to
8 judicial review at the instance of any taxpayer affected thereby in the
9 manner provided by law for the review of a final decision or action of
10 administrative agencies of the city. An application by a taxpayer for
11 such review must be made within four months after notice of the decision
12 is sent by certified mail, return receipt requested, to the taxpayer and
13 the commissioner of finance.

14 (b) Judicial review exclusive remedy. The review of a decision of the
15 tax appeals tribunal provided by this section shall be the exclusive
16 remedy available to any taxpayer for the judicial determination of the
17 liability of the taxpayer for the taxes imposed by this chapter.

18 (c) Assessment pending review; review bond. Irrespective of any
19 restrictions on the assessment and collection of deficiencies, the
20 commissioner of finance may assess a deficiency determined by the tax
21 appeals tribunal in a decision rendered pursuant to section one hundred
22 seventy-one of the charter of the preceding municipality as it existed
23 January first, nineteen hundred ninety-four after the expiration of the
24 period specified in subdivision (a) of this section, notwithstanding
25 that an application for judicial review in respect of such deficiency
26 has been duly made by the taxpayer, unless the taxpayer, at or before
27 the time his or her application for review is made, has paid the defi-
28 ciency, has deposited with the commissioner of finance the amount of the
29 deficiency, or has filed with the commissioner of finance a bond, which
30 may be a jeopardy bond under subdivision (h) of section 11-534 of this
31 chapter, in the amount of the portion of the deficiency, including
32 interest and other amounts, in respect of which the application for
33 review is made and all costs and charges which may accrue against such
34 taxpayer in the prosecution of the proceeding, including costs of all
35 appeals, and with surety approved by a justice of the supreme court of
36 the state of New York, conditioned upon the payment of the deficiency,
37 including interests and other amounts, as finally determined and such
38 costs and charges. If, as a result of a waiver of the restrictions on
39 the assessment and collection of a deficiency, any part of the amount
40 determined by the tax appeals tribunal is paid after the filing of the
41 review bond, such bond shall, at the request of the taxpayer, be propor-
42 tionately reduced.

43 (d) Credit, refund or abatement after review. If the amount of a defi-
44 ciency determined by the tax appeals tribunal is disallowed in whole or
45 in part by the court of review, the amount so disallowed shall be cred-
46 ited, or refunded to the taxpayer, without the making of claim therefor,
47 or, if payment has not been made, shall be abated.

48 (e) Date of finality of tax appeals tribunal's decision. A decision of
49 the tax appeals tribunal shall become final upon the expiration of the
50 period specified in subdivision (a) of this section for making an appli-
51 cation for review, if no such application has been duly made within such
52 time, or if such application has been duly made, upon expiration of the
53 time for all further judicial review, or upon the rendering by the tax
54 appeals tribunal of a decision in accordance with the mandate of the
55 court on review. Notwithstanding the provisions of this subdivision,
56 for the purpose of making an application for review, the decision of the

1 tax appeals tribunal shall be deemed final on the date the notice of
2 decision is sent by certified mail to the taxpayer and the commissioner
3 of finance.

4 § 11-531 Mailing rules; holidays; miscellaneous. (a) Timely mailing.

5 (1) If any return, declaration of estimated tax, claim, statement,
6 notice, petition, or other document required to be filed, or any payment
7 required to be made, within a prescribed period or on or before a
8 prescribed date under authority of any provision of this chapter is,
9 after such period or such date, delivered by the United States mail to
10 the commissioner of finance, tax appeals tribunal, bureau, office, offi-
11 cer or person with which or with whom such document is required to be
12 filed, or to which or to whom such payment is required to be made, the
13 date of the United States postmark stamped on the envelope shall be
14 deemed to be the date of delivery. This subdivision shall apply only if
15 the postmark date falls within the prescribed period or on or before the
16 prescribed date for the filing of such document, or for making the
17 payment, including any extension granted for such filing or payment, and
18 only if such document or payment was deposited in the mail, postage
19 prepaid, properly addressed to the commissioner of finance, tax appeals
20 tribunal, bureau, office, officer or person with which or with whom the
21 document is required to be filed or to which or to whom such payment is
22 required to be made. If any document is sent by United States registered
23 mail, such registration shall be prima facie evidence that such document
24 was delivered to the commissioner of finance, tax appeals tribunal,
25 bureau, office, officer or person to which or to whom addressed. To the
26 extent that the commissioner of finance or, where relevant, the tax
27 appeals tribunal shall prescribe by regulation, certified mail may be
28 used in lieu of registered mail under this section. Except as provided
29 in paragraph two of this subdivision, this subdivision shall apply in
30 the case of postmarks not made by the United States postal service only
31 if and to the extent provided by regulations of the commissioner of
32 finance or, where relevant, the tax appeals tribunal.

33 (2) (A) Any reference in paragraph one of this subdivision to the
34 United States mail shall be treated as including a reference to any
35 delivery service designated by the secretary of the treasury of the
36 United States pursuant to section seventy-five hundred two of the inter-
37 nal revenue code and any reference in paragraph one of this subdivision
38 to a United States postmark shall be treated as including a reference to
39 any date recorded or marked in the manner described in section seventy-
40 five hundred two of the internal revenue code by a designated delivery
41 service. If the commissioner of finance finds that any delivery service
42 designated by such secretary is inadequate for the needs of the city,
43 the commissioner may withdraw such designation for purposes of this
44 title. The commissioner may also designate additional delivery services
45 meeting the criteria of section seventy-five hundred two of the internal
46 revenue code for purposes of this title, or may withdraw any such desig-
47 nation if the commissioner of finance finds that a delivery service so
48 designated is inadequate for the needs of the city. Any reference in
49 paragraph one of this subdivision to the United States mail shall be
50 treated as including a reference to any delivery service designated by
51 the commissioner of finance and any reference in paragraph one of this
52 subdivision to a United States postmark shall be treated as including a
53 reference to any date recorded or marked in the manner described in
54 section seventy-five hundred two of the internal revenue code by a
55 delivery service designated by the commissioner of finance. Notwith-
56 standing the provisions of this paragraph, any withdrawal of designation

1 or additional designation by the commissioner of finance shall not be
2 effective for purposes of service upon the tax appeals tribunal, unless
3 and until such withdrawal of designation or additional designation is
4 ratified by the president of the tax appeals tribunal.

5 (B) Any equivalent of registered or certified mail designated by the
6 United States secretary of the treasury, or as may be designated by the
7 commissioner of finance pursuant to the same criteria used by such
8 secretary for such designations pursuant to section seventy-five hundred
9 two of the internal revenue code, shall be included within the meaning
10 of registered or certified mail as used in paragraph one of this subdi-
11 vision. If the commissioner of finance finds that any equivalent of
12 registered or certified mail designated by such secretary or the commis-
13 sioner of finance is inadequate for the needs of the city, the commis-
14 sioner of finance may withdraw such designation for purposes of this
15 title. Notwithstanding the provisions of this paragraph, any withdrawal
16 of designation or additional designation by the commissioner of finance
17 shall not be effective for purposes of service upon the tax appeals
18 tribunal, unless and until such withdrawal of designation or additional
19 designation is ratified by the president of the tax appeals tribunal.

20 (b) Last known address. For purposes of this chapter, a taxpayer's
21 last known address shall be given in the last return filed by the
22 taxpayer, unless subsequently to the filing of such return the taxpayer
23 shall have notified the commissioner of finance of a change of address.

24 (c) Last day a Saturday, Sunday or legal holiday. When the last day
25 prescribed under authority of this chapter, including any extension of
26 time, for performing any act falls on Saturday, Sunday, or a legal holi-
27 day in the state of New York, the performance of such act shall be
28 considered timely if it is performed on the next succeeding day which is
29 not a Saturday, Sunday or legal holiday.

30 (d) Certificate: unfiled return. For purposes of this chapter and
31 sections one hundred sixty-eight through one hundred seventy-two of the
32 charter of the preceding municipality, the certificate of the commis-
33 sioner of finance to the effect that a tax has not been paid, that a
34 return or declaration of estimated tax has not been filed, or that
35 information has not been supplied, as required by or under the
36 provisions of this title, shall be prima facie evidence that such tax
37 has not been paid, that such return or declaration has not been filed,
38 or that such information has not been supplied.

39 § 11-532 Collection, levy and liens. (a) Collection procedures. The
40 taxes imposed by this chapter shall be collected by the commissioner of
41 finance, and the commissioner may establish the mode or time for the
42 collection of any amount due it under this chapter if not otherwise
43 specified. The commissioner of finance shall, upon request, give a
44 receipt for any sum collected under this chapter. The commissioner of
45 finance may authorize banks or trust companies which are depositories or
46 financial agents of the city to receive and give a receipt for any tax
47 imposed under this chapter in such manner, at such times, and under such
48 conditions as the commissioner of finance may prescribe; and the commis-
49 sioner of finance shall prescribe the manner, times and conditions under
50 which the receipt of such tax by such banks and trust companies is to be
51 treated as payment of such tax to the commissioner of finance.

52 (b) Notice and demand for tax. The commissioner of finance shall as
53 soon as practicable give notice to each person liable for any amount of
54 tax, addition to tax, penalty or interest, which has been assessed but
55 remains unpaid, stating the amount and demanding payment thereof. Such
56 notice shall be left at the dwelling or usual place of business of such

1 person or shall be sent by mail to such person's last known address.
2 Except where the commissioner of finance determines that collection
3 would be jeopardized by delay, if any tax is assessed prior to the last
4 date, including any date fixed by extension, prescribed for payment of
5 such tax, payment of such tax shall not be demanded until after such
6 date.

7 (c) Issuance of warrant after notice and demand. If any person liable
8 under this chapter for the payment of any tax, addition to tax, penalty
9 or interest neglects or refuses to pay the same within the ten days
10 after notice and demand herefor is given to such person under subdivi-
11 sion (b) of this section, the commissioner of finance may within six
12 years after the date of such assessment issue a warrant directed to the
13 sheriff of any county of the state, or to any officer or employee of the
14 department of finance, commanding such person to levy upon and sell such
15 person's real and personal property for the payment of the amount
16 assessed, with the cost of executing the warrant, and to return such
17 warrant to the commissioner of finance and pay to the commissioner the
18 money collected by virtue thereof within sixty days after the receipt of
19 the warrant. If the commissioner of finance finds that the collection
20 of the tax or other amount is in jeopardy, notice and demand for immedi-
21 ate payment of such tax may be made by the commissioner of finance and
22 upon failure or refusal to pay such tax or other amount the commissioner
23 of finance may issue a warrant without regard to the ten-day period
24 provided in this subdivision.

25 (d) Copy of warrant to be filed and lien to be created. Any sheriff
26 or officer or employee who receives a warrant under subdivision (c) of
27 this section shall within five days thereafter file a copy with the
28 clerk of the appropriate county. The clerk shall thereupon enter in the
29 judgment docket, in the column for judgment debtors, the name of the
30 taxpayer mentioned in the warrant, and in appropriate columns the tax or
31 other amounts for which the warrant is issued and the date when such
32 copy is filed; and such amount shall thereupon be a binding lien upon
33 the real, personal and other property of the taxpayer.

34 (e) Judgment. When a warrant has been filed with the county clerk the
35 commissioner of finance shall, on behalf of the city, be deemed to have
36 obtained judgment against the taxpayer for the tax or other amounts.

37 (f) Execution. The sheriff or officer or employee shall thereupon
38 proceed upon the judgment in all respects, with like effect, and in the
39 same manner prescribed by law in respect to executions issued against
40 property upon judgments of a court of record, and a sheriff shall be
41 entitled to the same fees for the sheriff's services in executing the
42 warrant, to be collected in the same manner. An officer or employee of
43 the department of finance may proceed in any county or counties of this
44 state and shall have all the powers of execution conferred by law upon
45 sheriffs, but shall be entitled to no fee or compensation in excess of
46 actual expenses paid in connection with the execution of the warrant.

47 (g) Taxpayer not a resident of this state. Where a notice and demand
48 under subdivision (b) of this section shall have been given to a taxpay-
49 er who is not then a resident of this state, and it appears to the
50 commissioner of finance that it is not practicable to find in this state
51 property of the taxpayer sufficient to pay the entire balance of tax or
52 other amount owing by such taxpayer who is not then a resident of this
53 state, the commissioner of finance may, in accordance with subdivision
54 (c) of this section, issue a warrant directed to an officer or employee
55 of the department of finance, a copy of which warrant shall be mailed by
56 certified or registered mail to the taxpayer at the taxpayer's last

1 known address, subject to the rules for mailing provided in subdivision
2 (a) of section 11-521 of this chapter. Such warrant shall command the
3 officer or employee to proceed in Richmond county, and such officer or
4 employee shall, within five days after receipt of the warrant, file the
5 warrant and obtain a judgment in accordance with this section. Thereup-
6 on the commissioner of finance may authorize the institution of any
7 action or proceeding to collect or enforce the judgment in any place and
8 by any procedure that a civil judgment of the supreme court of the state
9 of New York could be collected or enforced. The commissioner of finance
10 may also, in the commissioner's discretion, designate agents or retain
11 counsel for the purpose of collecting, outside the state of New York,
12 any unpaid taxes, additions to tax, penalties or interest which have
13 been assessed under this chapter against taxpayers who are not residents
14 of this state, may fix the compensation of such agents and counsel to be
15 paid out of money appropriated or otherwise lawfully available for
16 payment thereof, and may require of them bonds or other security for the
17 faithful performance of their duties, in such form and in such amount as
18 the commissioner of finance shall deem proper and sufficient.

19 (h) Action by city for recovery of taxes. Action may be brought by
20 the corporation counsel of the city at the instance of the commissioner
21 of finance as agent and trustee for the city to recover the amount of
22 any unpaid taxes, additions to tax, penalties or interest which have
23 been assessed under this chapter within six years prior to the date the
24 action is commenced.

25 (i) Release of lien or vacating warrant. The commissioner of finance,
26 if he or she finds that the interests of the city will not thereby be
27 jeopardized, and upon such conditions as the commissioner may require,
28 may release any property from the lien of any warrant or vacate such
29 warrant for unpaid taxes, additions to tax, penalties and interest filed
30 pursuant to subdivision (d) or (g) of this section, and such release or
31 vacating of the warrant may be recorded in the office of any recording
32 officer in which such warrant has been filed. The clerk shall thereupon
33 cancel and discharge as of the original date of docketing the vacated
34 warrant.

35 § 11-533 Transferees. (a) General. The liability, at law or in equity,
36 of a transferee of property of a taxpayer for any tax, additions to tax,
37 penalty or interest due the commissioner of finance under this chapter,
38 shall be assessed, paid, and collected in the same manner and subject to
39 the same provisions and limitations as in the case of the tax to which
40 the liability relates, except that the period of limitations for assess-
41 ment against the transferee shall be extended by one year for each
42 successive transfer, in order, from the original taxpayer to the trans-
43 feree involved, but not by more than three years in the aggregate. The
44 term "transferee" includes donee, heir, legatee, devisee and distribu-
45 tee.

46 (b) Exceptions. (1) If before the expiration of the period of limi-
47 tations for assessment of liability of the transferee, a claim has been
48 filed by the commissioner of finance in any court against the original
49 taxpayer or the last preceding transferee based upon the liability of
50 the original taxpayer, then the period of limitation for assessment of
51 liability of the transferee shall in no event expire prior to one year
52 after such claim has been finally allowed, disallowed or otherwise
53 disposed of.

54 (2) If, before the expiration of the time prescribed in subdivision
55 (a) of this section or the immediately preceding paragraph of this
56 subdivision for the assessment of the liability, the commissioner of

1 finance and the transferee have both consented in writing to its assess-
2 ment after such time, the liability may be assessed at any time prior to
3 the expiration of the period agreed upon. The period so agreed upon may
4 be extended by subsequent agreements in writing made before the expira-
5 tion of the period previously agreed upon. For the purpose of determin-
6 ing the period of limitation on credit or refund to the transferee of
7 overpayments of tax made by such transferee or overpayments of tax made
8 by the transferor as to which the transferee is legally entitled to
9 credit or refund, such agreement and any extension thereof shall be
10 deemed an agreement and extension thereof referred to in subdivision (b)
11 of section 11-527 of this chapter. If the agreement is executed after
12 the expiration of the period of limitation for assessment against the
13 original taxpayer, then in applying the limitations under subdivision
14 (b) of section 11-527 of this chapter on the amount of the credit or
15 refund, the periods specified in subdivision (a) of section 11-527 of
16 this chapter shall be increased by the period from the date of such
17 expiration to the date of agreement.

18 (c) Deceased transferor. If any person is deceased, the period of
19 limitation for assessment against such person shall be the period that
20 would be in effect if such person had lived.

21 (d) Evidence. Notwithstanding the provisions of subdivision (e) of
22 section 11-537 of this chapter the commissioner of finance shall use his
23 or her powers to make available to the transferee evidence necessary to
24 enable the transferee to determine the liability of the original taxpay-
25 er and of any preceding transferees, but without undue hardship to the
26 original taxpayer or preceding transferee. See subdivision (e) of
27 section 11-529 of this chapter for rules as to burden of proof.

28 § 11-534 Jeopardy assessment. (a) Authority for making. If the commis-
29 sioner of finance believes that the assessment or collection of a defi-
30 ciency will be jeopardized by delay, the commissioner shall, notwith-
31 standing the provision of sections 11-521 and 11-536 of this chapter,
32 and immediately assess such deficiency, together with all interest,
33 penalties and additions to tax provided for by law, and notice and
34 demand shall be made by the commissioner of finance for the payment
35 thereof.

36 (b) Notice of deficiency. If the jeopardy assessment is made before
37 any notice in respect to the tax to which the jeopardy assessment
38 relates has been mailed under section 11-521 of this chapter, then the
39 commissioner of finance shall mail a notice under such section within
40 sixty days after the making of the assessment.

41 (c) Amount assessable before decision of tax appeals tribunal. The
42 jeopardy assessment may be made in respect of a deficiency greater or
43 less than that of which notice is mailed to the taxpayer and whether or
44 not the taxpayer has heretofore filed a petition with the tax appeals
45 tribunal. The commissioner of finance may, at any time before the tax
46 appeals tribunal renders its decision, abate such assessment, or any
47 unpaid portion thereof, to the extent that the commissioner believes the
48 assessment to be excessive in amount. The tax appeals tribunal may in
49 its decision redetermine the entire amount of the deficiency and of all
50 amounts assessed at the same time in connection therewith.

51 (d) Amount assessable after decision of tax appeals tribunal. If the
52 jeopardy assessment is made after the decision of the tax appeals tribu-
53 nal is rendered, such assessment may be made only in respect of the
54 deficiency determined by the tax appeals tribunal in its decision.

55 (e) Expiration of right to assess. A jeopardy assessment may not be
56 made after the decision of the tax appeals tribunal has become final or

1 after the taxpayer has made an application for review of the decision of
2 the tax appeals tribunal.

3 (f) Collection of unpaid amounts. When a petition has been filed with
4 the tax appeals tribunal and when the amount which should have been
5 assessed has been determined by a decision of the tax appeals tribunal
6 which has become final, then any unpaid portion, the collection of which
7 has been stayed by bond, shall be collected as part of the tax upon
8 notice and demand from the commissioner of finance, and any remaining
9 portion of the assessment shall be abated. If the amount already
10 collected exceeds the amount determined as the amount which should have
11 been assessed, such excess shall be credited or refunded to the taxpayer
12 as provided in section 11-526 of this chapter without the filing of
13 claim therefor. If the amount determined as the amount which should have
14 been assessed is greater than the amount actually assessed, then the
15 difference shall be assessed and shall be collected as part of the tax
16 upon notice and demand from the commissioner of finance.

17 (g) Abatement if jeopardy does not exist. The commissioner of finance
18 may abate the jeopardy assessment if the commissioner finds that jeopar-
19 dy does not exist. Such abatement may not be made after a decision of
20 the tax appeals tribunal in respect of the deficiency has been rendered
21 or, if no petition is filed with the tax appeals tribunal, after the
22 expiration of the period for filing such petition. The period of limita-
23 tion on the making of assessments and levy or a proceeding for
24 collection, in respect of any deficiency, shall be determined as if the
25 jeopardy assessment so abated had not been made, except that the running
26 of such period shall in any event be suspended for the period from the
27 date of such jeopardy assessment until the expiration of the tenth day
28 after the day on which such jeopardy assessment is abated.

29 (h) Bond to stay collection. The collection of the whole or any amount
30 of any jeopardy assessment may be stayed by filing with the commissioner
31 of finance, within such time as may be fixed by regulation, a bond in an
32 amount equal to the amount as to which the stay is desired, conditioned
33 upon the payment of the amount, together with interest thereon, the
34 collection of which is stayed at the time at which, but for the making
35 of the jeopardy assessment, such amount would be due. Upon the filing of
36 the bond the collection of so much of the amount assessed as is covered
37 by the bond shall be stayed. The taxpayer shall have the right to waive
38 such stay at any time in respect of the whole or any part of the amount
39 covered by the bond, and if as a result of such waiver any part of the
40 amount covered by the bond is paid, then the bond shall at the request
41 of the taxpayer, be proportionately reduced. If any portion of the
42 jeopardy assessment is abated, or if a notice or deficiency under
43 section 11-521 of this chapter is mailed to the taxpayer in a lesser
44 amount, the bond shall, at the request of the taxpayer, be proportion-
45 ately reduced.

46 (i) Petition to tax appeals tribunal. If the bond is given before the
47 taxpayer has filed his or her petition under section 11-529 of this
48 chapter, the bond shall contain a further condition that if a petition
49 is not filed within the period provided in such section, then the amount
50 the collection of which is stayed by the bond, will be paid on notice
51 and demand at any time after the expiration of such period, together
52 with interest thereon from the date of the jeopardy notice and demand to
53 the date of notice and demand under this subdivision. The bond shall be
54 conditioned upon the payment of so much of such assessment, collection
55 of which is stayed by the bond, as is not abated by a decision of the
56 tax appeals tribunal which has become final. If the tax appeals tribunal

1 determines that the amount assessed is greater than the amount which
2 should have been assessed, then the bond shall, at the request of the
3 taxpayer, be proportionately reduced when the decision of the tax
4 appeals tribunal is rendered.

5 (j) Stay of sale of seized property pending tax appeals tribunal deci-
6 sion. Where a jeopardy assessment is made, the property seized for the
7 collection of the tax shall not be sold:

8 (1) if subdivision (b) of this section is applicable, prior to the
9 issuance of the notice of deficiency and the expiration of the time
10 provided in section 11-529 of this chapter for filing a petition with
11 the tax appeals tribunal, and

12 (2) if a petition is filed with the tax appeals tribunal, whether
13 before or after the making of such jeopardy assessment, prior to the
14 expiration of the period during which the assessment of the deficiency
15 would be prohibited if subdivision (a) of this section were not applica-
16 ble.

17 Such property may be sold if the taxpayer consents to the sale, or if
18 the commissioner of finance determines that the expenses of conservation
19 and maintenance will greatly reduce the net proceeds, or if the property
20 is perishable.

21 (k) Interest. For the purpose of subdivision (a) of section 11-524 of
22 this chapter, the last date prescribed for payment shall be determined
23 without regard to any notice and demand for payment issued under this
24 section prior to the last date otherwise prescribed for such payment.

25 (l) Early termination of taxable year. If the commissioner of finance
26 finds that a taxpayer designs quickly to depart from this state or to
27 remove his or her property therefrom, or to conceal himself or herself
28 or his or her property therein, or to do any other act tending to preju-
29 dice or to render wholly or partly ineffectual proceedings to collect
30 the income tax for the current or the preceding taxable year unless such
31 proceedings be brought without delay, the commissioner of finance shall
32 declare the taxable period for such taxpayer immediately terminated, and
33 shall cause notice of such finding and declaration to be given to the
34 taxpayer, together with a demand for immediate payment of the tax for
35 the taxable period so declared terminated and of the tax for the preced-
36 ing taxable year or so much of such tax as is unpaid, whether or not the
37 time otherwise allowed by law for filing return and paying the tax has
38 expired; and such taxes shall thereupon become immediately due and paya-
39 ble. In any proceeding brought to enforce payment of taxes made due and
40 payable by virtue of the provisions of this subdivision, the finding of
41 the commissioner of finance, whether made after notice to the taxpayer
42 or not, shall be for all purposes presumptive evidence of jeopardy.

43 (m) Reopening of taxable period. Notwithstanding the termination of
44 the taxable period of the taxpayer by the commissioner of finance as
45 provided in subdivision (l) of this section, the commissioner of finance
46 may reopen such taxable period each time the taxpayer is found by the
47 commissioner of finance to have received income, within the current
48 taxable year, since the termination of such period. A taxable period so
49 terminated by the commissioner of finance may be reopened by the taxpay-
50 er if the taxpayer files with the commissioner of finance a true and
51 accurate return of taxable income and credits allowed under this chapter
52 for taxable period, together with such other information as the commis-
53 sioner of finance may by regulations prescribe.

54 (n) Furnishing of bond where taxable year is closed by the commission-
55 er of finance. Payment of taxes shall not be enforced by any proceedings
56 under the provisions of subdivision (l) of this section prior to the

1 expiration of the time otherwise allowed for paying such taxes if the
2 taxpayer furnishes, under regulations prescribed by the commissioner of
3 finance, a bond to insure the timely making of returns with respect to,
4 and payment of, such taxes or any taxes under this chapter for prior
5 years.

6 § 11-535 Criminal penalties; cross-reference. For criminal penalties,
7 see chapter forty of this title.

8 § 11-536 Armed forces relief provisions. (a) Time to be disregarded.
9 In the case of an individual serving in the armed forces of the United
10 States or serving in support of such armed forces, in an area designated
11 by the president of the United States by executive order as a "combat
12 zone" at any time during the period designated by the president by exec-
13 utive order as the period of combatant activities in such zone, or
14 hospitalized outside the state as a result of injury received while
15 serving in such an area during such time, the period of service in such
16 area, plus the period of continuous hospitalization outside the state
17 attributable to such injury, and the next one hundred eighty days there-
18 after, shall be disregarded in determining, under this chapter, in
19 respect of the tax liability, including any interest, penalty, or addi-
20 tion to the tax, of such individual:

21 (1) Whether any of the following acts was performed within the time
22 prescribed therefor:

23 (A) filing any return of tax;

24 (B) payment of any tax or any installment thereof or of any other
25 liability to the commissioner of finance, in respect thereof;

26 (C) filing a petition with the tax appeals tribunal for credit or
27 refund or for redetermination of a deficiency, or application for review
28 of a decision rendered by the tax appeals tribunal;

29 (D) allowance of a credit or refund of tax;

30 (E) filing a claim for credit or refund of tax;

31 (F) assessment of tax;

32 (G) giving or making any notice or demand for the payment of any tax,
33 or with respect to any liability to the commissioner of finance in
34 respect of tax;

35 (H) collection, by the commissioner of finance, by levy or otherwise
36 of the amount of any liability in respect of tax;

37 (I) bringing suit by the city, or any officer, on its behalf, in
38 respect of any liability in respect of tax; and

39 (J) any other act required or permitted under this chapter or speci-
40 fied in regulations prescribed under this section by the commissioner of
41 finance.

42 (2) The amount of any credit or refund (including interest).

43 (b) Action taken before ascertainment of right to benefits. The
44 assessment or collection of the tax imposed by this chapter or of any
45 liability to the commissioner of finance in respect of such tax, or any
46 action or proceeding by or on behalf of the commissioner of finance in
47 connection therewith, may be made, taken, begun, or prosecuted in
48 accordance with law, without regard to the provisions of subdivision (a)
49 of this section, unless prior to such assessment, collection, action, or
50 proceeding it is ascertained that the person concerned is entitled to
51 the benefit of subdivision (a) of this section.

52 (c) Members of armed forces dying in action. In the case of any person
53 who dies during an induction period while in active service as a member
54 of the armed forces of the United States, if such death occurred while
55 serving in a combat zone during a period of combatant activities in such
56 zone, as described in subdivision (a) of this section, or as a result of

1 wounds, disease or injury incurred while so serving, the tax imposed by
2 this chapter shall not apply with respect to the taxable year in which
3 falls the date of such person's death, or with respect to any prior
4 taxable year ending on or after the first day he or she so served in a
5 combat zone, and no returns shall be required in behalf of such person
6 or such person's estate for such year; and the tax for any such taxable
7 year which is unpaid at the date of his or her death, including inter-
8 est, additions to tax and penalties, if any, shall not be assessed and
9 if assessed, the assessment shall be abated and, if collected, shall be
10 refunded to the legal representative of such person's estate if one has
11 been appointed and has qualified, or, if no legal representative has
12 been appointed or has qualified, to such person's surviving spouse.

13 § 11-537 General powers of commissioner of finance. (a) General. The
14 commissioner of finance shall administer and enforce the tax imposed by
15 this chapter and the commissioner is authorized to make such rules and
16 regulations, and to require such facts and information to be reported,
17 as the commissioner may deem necessary to enforce the provision of this
18 chapter; and the commissioner may delegate his or her powers and func-
19 tions under all parts of this chapter to one of the commissioner's depu-
20 ties or to any employee or employees of the commissioner's department.

21 (b) Examination of books and witnesses. The commissioner of finance
22 for the purpose of ascertaining the correctness of any return, or for
23 the purpose of making an estimate of tax of any person, shall have power
24 to examine or to cause to have examined, by any agent or representative
25 designated by the commissioner for that purpose, any books, papers,
26 records or memoranda bearing upon the matters required to be included in
27 the return, and may require the attendance of the person rendering the
28 return or any officer or employee of such person, or the attendance of
29 any other person having knowledge in the premises, and may take testimo-
30 ny and require proof material for the commissioner's information, with
31 power to administer oaths to such person or persons.

32 (c) Abatement authority. The commissioner of finance, of his or her
33 own motion, may abate any small unpaid balance of an assessment of tax
34 under this part, or any liability in respect thereof, if the commis-
35 sioner of finance determines under uniform rules prescribed by the
36 commissioner that the administration and collection costs involved would
37 not warrant collection of the amount due. The commissioner may also
38 abate, of his or her own motion, the unpaid portion of the assessment of
39 any tax or any liability in respect thereof, which is excessive in
40 amount, or is assessed after the expiration of the period of limitation
41 properly applicable thereto, or is erroneously or illegally assessed.
42 No claim for abatement under this subdivision shall be filed by a
43 taxpayer.

44 (d) Special refund authority. Where no questions of fact or law are
45 involved and it appears from the records of the commissioner of finance
46 that any moneys have been erroneously or illegally collected from any
47 taxpayer or other person, or paid by such taxpayer or other person under
48 a mistake of facts, pursuant to the provisions of this chapter, the
49 commissioner of finance at any time, without regard to any period of
50 limitations, shall have the power, upon making a record of his or her
51 reasons therefor in writing, to cause such moneys so paid and being
52 erroneously and illegally held to be refunded.

53 (e) Cooperation with the United States, this state and other states.
54 Notwithstanding the provisions of section 11-538 of this chapter, the
55 commissioner of finance may permit the secretary of the treasury of the
56 United States or the secretary's delegates, or the proper officer of

1 this or any other state imposing an income tax upon the incomes of indi-
2 viduals, or the authorized representative of any such officer, to
3 inspect any return filed under this chapter or may furnish to such offi-
4 cer or his or her authorized representative an abstract of any such
5 return or supply such officer with information concerning an item
6 contained in any such return, or disclosed by any investigation of tax
7 liability under this chapter, but such permission shall be granted or
8 such information furnished to such officer or such officer's represen-
9 tative only if the laws of the United States or of such state, as the
10 case may be, grant substantially similar privileges to the commissioner
11 of finance and such information is to be used for tax purposes only; and
12 provided further the commissioner of finance may furnish to the secre-
13 tary of the treasury of the United States or the secretary's delegates
14 or to the tax commission of the state of New York or its delegates such
15 returns filed under this chapter and other tax information, as he or she
16 may consider proper for use in court actions or proceedings under the
17 internal revenue code or the tax law of the state of New York, whether
18 civil or criminal, where a written request therefor has been made to the
19 commissioner of finance by the secretary of the treasury or by such tax
20 commission or by their delegates, provided the laws of the United States
21 or the laws of the state of New York grant substantially similar powers
22 to the secretary of the treasury of the United States or the secretary's
23 delegates or to such tax commission or its delegates. Where the commis-
24 sioner of finance has so authorized use of returns or other information
25 in such actions or proceedings, officers and employees of the department
26 of finance may testify in such actions or proceedings in respect to such
27 returns or other information.

28 (f) (1) Authority to set interest rates. The commissioner of finance
29 shall set the overpayment and underpayment rates of interest to be paid
30 pursuant to sections 11-524, 11-525 and 11-528 of this chapter, but if
31 no such rate or rates of interest are set, such overpayment rate shall
32 be deemed to be set at six percent per annum and such underpayment rate
33 shall be deemed to be set at seven and one-half percent per annum. Such
34 overpayment and underpayment rates shall be the rates prescribed in
35 paragraph two of this subdivision, but the underpayment rate shall not
36 be less than seven and one-half percent per annum. Any such rates set by
37 the commissioner of finance shall apply to taxes, or any portion there-
38 of, which remain or become due or overpaid on or after the date on which
39 such rates become effective and shall apply only with respect to inter-
40 est computed or computable for periods or portions of periods occurring
41 in the period during which such rates are in effect.

42 (2) General rule. (A) Overpayment rate. The overpayment rate set under
43 this subdivision shall be the sum of (i) the federal short-term rate as
44 provided under paragraph three of this subdivision, plus (ii) two
45 percentage points.

46 (B) Underpayment rate. The underpayment rate set under this subdivi-
47 sion shall be the sum of (i) the federal short-term rate as provided
48 under paragraph three of this subdivision, plus (ii) seven percentage
49 points.

50 (3) Federal short-term rate. For purposes of this subdivision:

51 (A) The federal short-term rate for any month shall be the federal
52 short-term rate determined by the United States secretary of the treas-
53 ury during such month in accordance with subsection (d) of section
54 twelve hundred seventy-four of the internal revenue code for use in
55 connection with section six thousand six hundred twenty-one of the
56 internal revenue code. Any such rate shall be rounded to the nearest

1 full percent, or, if a multiple of one-half of one percent, such rate
2 shall be increased to the next highest full percent.

3 (B) Period during which rate applies.

4 (i) In general. Except as provided in clause (ii) of this subpara-
5 graph, the federal short-term rate for the first month in each calendar
6 quarter shall apply during the first calendar quarter beginning after
7 such month.

8 (ii) Special rule for the month of September, nineteen hundred eight-
9 y-nine. The federal short-term rate for the month of April, nineteen
10 hundred eighty-nine shall apply with respect to setting the overpayment
11 and underpayment rates for the month of September, nineteen hundred
12 eighty-nine.

13 (4) Publication of interest rates. The commissioner of finance shall
14 cause to be published in the City Record, and give other appropriate
15 general notice of, the interest rates to be set under this subdivision
16 no later than twenty days preceding the first day of the calendar quar-
17 ter during which such interest rates apply. The setting and publication
18 of such interest rates shall not be included within paragraph (a) of
19 subdivision five of section one thousand forty-one of the city charter
20 of the preceding municipality as it existed January first, nineteen
21 hundred ninety-four relating to the definition of a rule.

22 (5) Cross-reference. For provisions relating to the power of the
23 commissioner of finance to abate small amounts of interest, see subdivi-
24 sion (c) of this section.

25 (g) In computing the amount of any interest required to be paid under
26 this chapter by the commissioner of finance or by the taxpayer, or any
27 other amount determined by reference to such amount of interest, such
28 interest and such amount shall be compounded daily. The provisions of
29 this subdivision shall not apply for purposes of computing the amount of
30 any addition to tax for failure to pay estimated tax under subdivision
31 (c) of section 11-525 of this chapter.

32 § 11-538 Secrecy requirement and the penalties for violation. 1.
33 Except in accordance with proper judicial order or as otherwise provided
34 by law, it shall be unlawful for the commissioner of finance, the
35 department of finance of the city, any officer or employee of the
36 department of finance of the city, any person engaged or retained by
37 such department on an independent contract basis, any depository to
38 which any return may be delivered as provided in subdivision four of
39 this section, any officer or employee of such depository, the tax
40 appeals tribunal, any commissioner or employee of such tribunal, or any
41 person who, pursuant to this section, is permitted to inspect any report
42 or return or to whom a copy, an abstract or a portion of any report or
43 return is furnished, or to whom any information contained in any report
44 or return is furnished, to divulge or make known in any manner the
45 amount of income or any particulars set forth or disclosed in any report
46 or return required under this chapter. The officers charged with the
47 custody of such reports and returns shall not be required to produce any
48 of them or evidence of anything contained in them in any action or
49 proceeding in any court, except on behalf of the city in an action or
50 proceeding under the provisions of this chapter or in any other action
51 or proceeding involving the collection of a tax due under this chapter
52 to which the city is a party or a claimant, or on behalf of any party to
53 any action or proceeding under the provisions of this chapter when the
54 reports, returns or facts shown thereby are directly involved in such
55 action or proceeding, in any of which events the court may require the
56 production of, and may admit in evidence, so much of said reports,

1 returns or of the facts shown thereby, as are pertinent to the action or
2 proceeding and no more. Nothing herein shall be construed to prohibit
3 the delivery to a taxpayer or to the taxpayer's duly authorized repre-
4 sentative of a certified copy of any return or report filed in
5 connection with his or her tax or to prohibit the publication of statis-
6 tics so classified as to prevent the identification of particular
7 reports or returns and the items thereof, or the inspection by the
8 corporation counsel or other legal representatives of the city of the
9 report or return of any taxpayer who shall bring action to set aside or
10 review the tax based thereon, or against whom an action or proceeding
11 under this chapter has been recommended by the commissioner of finance
12 or the corporation counsel or has been instituted, or the inspection of
13 the reports or returns required under this chapter by the duly desig-
14 nated officers or employees of the city for purposes of an audit under
15 this chapter or an audit authorized by the enacting of this chapter.
16 Reports and returns shall be preserved for three years and thereafter
17 until the commissioner of finance orders them to be destroyed.

18 2. Any officer or employee of the city or the state who willfully
19 violates the provisions of subdivision one of this section shall be
20 dismissed from office and be incapable of holding any public office in
21 the city or the state for a period of five years thereafter.

22 3. Cross-reference: For criminal penalties, see chapter forty of this
23 title.

24 4. Notwithstanding the provisions of subdivision one of this section,
25 the commissioner of finance, in his or her discretion, may require or
26 permit any or all persons liable for any tax imposed by this chapter, to
27 make payments on account of estimated tax and payment of any tax, penal-
28 ty or interest imposed by this chapter to banks, banking houses or trust
29 companies designated by the commissioner of finance and to file declara-
30 tions of estimated tax and reports and returns with such banks, banking
31 houses or trust companies as agents of the commissioner of finance, in
32 lieu of making any such payment directly to the commissioner of finance.
33 However, the commissioner of finance shall designate only such banks,
34 banking houses or trust companies as are depositories or financial
35 agents of the city.

36 5. This section shall be deemed a state statute for purposes of para-
37 graph (a) of subdivision two of section eighty-seven of the public offi-
38 cers law.

39 6. Notwithstanding anything in subdivision one of this section to the
40 contrary, if a taxpayer has petitioned the tax appeals tribunal for
41 administrative review as provided in section one hundred seventy of the
42 charter of the preceding municipality as it existed January first, nine-
43 teen hundred ninety-four, the commissioner of finance shall be author-
44 ized to present to the tribunal any report or return of such taxpayer,
45 or any information contained therein or relating thereto, which may be
46 material or relevant to the proceeding before the tribunal. The tax
47 appeals tribunal shall be authorized to publish a copy or a summary of
48 any decision rendered pursuant to section one hundred seventy-one of the
49 charter of the preceding municipality as it existed January first, nine-
50 teen hundred ninety-four.

51 7. Notwithstanding anything in subdivision one of this section, the
52 commissioner of finance may disclose to a taxpayer or a taxpayer's
53 related member, as defined in subdivision (e) of section 11-506 of this
54 chapter, information relating to any royalty paid, incurred or received
55 by such taxpayer or related member to or from the other, including the
56 treatment of such payments by the taxpayer or the related member in any

1 report or return transmitted to the commissioner of finance under this
2 title.

3 § 11-539 Inconsistencies with other laws. If any provision of this
4 chapter is inconsistent with, in conflict with, or contrary to any other
5 provision of law, such provision of this chapter shall prevail over such
6 other provision and such other provision shall be deemed to have been
7 amended, superseded or repealed to the extent of such inconsistency,
8 conflict or contrariety.

9 § 11-540 Disposition of revenues. All revenues resulting from the
10 imposition of the taxes under this chapter shall be paid into the treas-
11 ury of the city and shall be credited to and deposited in the general
12 fund of the city, but no part of such revenues may be expended unless
13 appropriated in the annual budget of the city.

14 CHAPTER 6

15 CITY BUSINESS

16 TAXES

17 SUBCHAPTER 1

18 GENERAL PROVISIONS

19 § 11-601 Definitions. When used in subchapters one through five:

20 1. "Taxpayer" means any corporation, association or other entity or
21 individual subject to tax under this chapter;

22 2. "State", "the state" or "this state" means the state of New York;

23 3. "Tax law", "insurance law", "private housing finance law", "envi-
24 ronmental conservation law", "public housing law", "state finance law",
25 "general municipal law", "public service law", "workers' compensation
26 law", "business corporation law", "civil practice law and rules", "crim-
27 inal procedure law", and "banking law" refer to laws of the state;

28 4. "Superintendent of insurance", and "commissioner of health" refer
29 to officials of the state;

30 5. "Commissioner of finance" means the commissioner of finance of the
31 city;

32 6. "Department of finance" means the department of finance of the
33 city;

34 7. "Domestic corporation" means a corporation organized under the laws
35 of the state; and

36 8. "Tax appeals tribunal" means the tax appeals tribunal established
37 by section one hundred sixty-eight of the charter of the preceding muni-
38 cipality as it existed January first, nineteen hundred ninety-four.

39 9. "REIT" means a real estate investment trust as defined in section
40 eight hundred fifty-six of the internal revenue code.

41 10. "RIC" means a regulated investment company as defined in section
42 eight hundred fifty-one of the internal revenue code.

43 11. "Captive REIT" means a REIT (a) that is not regularly traded on an
44 established securities market, and (b) more than fifty percent of the
45 voting stock of which is owned or controlled, directly or indirectly, by
46 a single corporation that is not exempt from federal income tax and is
47 not a REIT. Any voting stock in a REIT that is held in a segregated
48 asset account of a life insurance corporation, as described in section
49 eight hundred seventeen of the internal revenue code, shall not be taken
50 into account for purposes of determining whether a REIT is a captive
51 REIT.

52 12. "Captive RIC" means a RIC (a) that is not regularly traded on an
53 established securities market, and (b) more than fifty percent of the
54 voting stock of which is owned or controlled, directly or indirectly, by

1 a single corporation that is not exempt from federal income tax and is
2 not a RIC. Any voting stock in a RIC that is held in a segregated asset
3 account of a life insurance corporation, as described in section eight
4 hundred seventeen of the internal revenue code, shall not be taken into
5 account for purposes of determining whether a RIC is a captive RIC.

6 13. Unless a different meaning is clearly required, any term used in
7 this chapter shall have the same meaning as when used in a comparable
8 context in the laws of the United States relating to federal income
9 taxes, and any reference to the laws of the United States shall mean the
10 provisions of the internal revenue code of nineteen hundred fifty-four,
11 and amendments thereto, and other provisions of the laws of the United
12 States relating to federal income taxes, as the same are included in the
13 appendix to this chapter. The quotation of the aforesaid laws of the
14 United States is intended to make them a part of any appropriate chapter
15 and to avoid constitutional uncertainties which might result if such
16 laws were merely incorporated by reference. The quotation of a
17 provision of the federal internal revenue code or of any other law of
18 the United States shall not necessarily mean that it is applicable to or
19 has relevance to any of the chapters.

20 SUBCHAPTER 2
21 GENERAL CORPORATION TAX

22 § 11-602 Definitions. When used in this subchapter:

23 1. (a) "Corporation" includes (1) an association within the meaning of
24 paragraph three of subsection (a) of section seventy-seven hundred one
25 of the internal revenue code, including a limited liability company, (2)
26 a joint-stock company or association, (3) a publicly traded partnership
27 treated as a corporation for purposes of the internal revenue code
28 pursuant to section seventy-seven hundred four thereof and (4) any busi-
29 ness conducted by a trustee or trustees wherein interest or ownership is
30 evidenced by certificate or other written instrument;

31 (b) (1) Notwithstanding paragraph (a) of this subdivision, an unincor-
32 porated organization that (i) is described in subparagraph one or three
33 of such paragraph (a) and (ii) was subject to the provisions of chapter
34 five of this title for its taxable year beginning in nineteen hundred
35 ninety-five, may make a one-time election not to be treated as a corpo-
36 ration and, instead, to continue to be subject to the provisions of
37 chapter five of this title for its taxable years beginning in nineteen
38 hundred ninety-six and thereafter. Such election shall be made on the
39 return prescribed pursuant to such chapter five for such electing organ-
40 ization's taxable year beginning in nineteen hundred ninety-six, which
41 shall be filed on or before the due date, determined with regard to
42 extensions, for filing such return.

43 (2) An election under this paragraph shall continue to be in effect
44 until revoked by the unincorporated organization. An election under this
45 paragraph shall be revoked by the filing of a return under this subchap-
46 ter for the first taxable year with respect to which such revocation is
47 to be effective, which return shall be filed on or before the due date,
48 determined with regard to extensions, for filing such return. In no
49 event shall such election or revocation be for a part of a taxable year.

50 (c) Notwithstanding paragraph (a) of this subdivision, a corporation
51 shall not include an entity classified as a partnership for federal
52 income tax purposes.

1 2. "Subsidiary" means a corporation of which over fifty per centum of
2 the number of shares of stock entitling the holders thereof to vote for
3 the election of directors or trustees is owned by the taxpayer;

4 3. "Subsidiary capital" means investments in the stock of subsidiaries
5 and any indebtedness from subsidiaries, exclusive of accounts receivable
6 acquired in the ordinary course of trade or business for services
7 rendered or for sales of property held primarily for sale to customers,
8 whether or not evidenced by written instrument, on which interest is not
9 claimed and deducted by the subsidiary for purposes of taxation under
10 this subchapter or subchapter three of this chapter, provided, however,
11 that, in the discretion of the commissioner of finance, there shall be
12 deducted from subsidiary capital any liabilities which are directly or
13 indirectly attributable to subsidiary capital;

14 4. "Investment capital" means investments in stocks, bonds and other
15 securities, corporate and governmental, not held for sale to customers
16 in the regular course of business, exclusive of subsidiary capital and
17 stock issued by the taxpayer, provided, however, that, in the discretion
18 of the commissioner of finance, there shall be deducted from investment
19 capital any liabilities which are directly or indirectly attributable to
20 investment capital; and provided, further, that investment capital shall
21 not include any such investments the income from which is excluded from
22 entire net income pursuant to the provisions of paragraph (c-1) of
23 subdivision eight of this section, and that investment capital shall be
24 computed without regard to any liabilities directly or indirectly
25 attributable to such investments, but only if air carriers organized in
26 the United States and operating in the foreign country or countries in
27 which the taxpayer has its major base of operations and in which it is
28 organized, resident or headquartered, if not in the same country as its
29 major base of operations, are not subject to any tax based on or meas-
30 ured by capital imposed by such foreign country or countries or any
31 political subdivision thereof, or if taxed are provided an exemption,
32 equivalent to that provided for herein, from any tax based on or meas-
33 ured by capital imposed by such foreign country or countries and from
34 any such tax imposed by any political subdivision thereof;

35 5. "Investment income" means income, including capital gains in excess
36 of capital losses, from investment capital to the extent included in
37 computing entire net income, less, (a) in the discretion of the commis-
38 sioner of finance, any deductions allowable in computing entire net
39 income which are directly or indirectly attributable to investment capi-
40 tal or investment income, and (b) such portion of any net operating loss
41 deduction allowable in computing entire net income, as the investment
42 income, before such deduction, bears to entire net income, before such
43 deduction, provided, however, that in no case shall investment income
44 exceed entire net income;

45 6. (a) "Business capital" means all assets, other than subsidiary
46 capital, investment capital and stock issued by the taxpayer, less
47 liabilities not deducted from subsidiary or investment capital except
48 that cash on hand and on deposit shall be treated as investment capital
49 or as business capital as the taxpayer may elect;

50 (b) Provided, however, "business capital" shall not include assets to
51 the extent employed for the purpose of generating income which is
52 excluded from entire net income pursuant to the provisions of paragraph
53 (c-1) of subdivision eight of this section and shall be computed without
54 regard to liabilities directly or indirectly attributable to such
55 assets, but only if air carriers organized in the United States and
56 operating in the foreign country or countries in which the taxpayer has

1 its major base of operations and in which it is organized, resident or
2 headquartered, if not in the same country as its major base of oper-
3 ations, are not subject to any tax based on or measured by capital
4 imposed by such foreign country or countries or any political subdivi-
5 sion thereof, or if taxed, are provided an exemption, equivalent to that
6 provided for herein, from any tax based on or measured by capital
7 imposed by such foreign country or countries and from any such tax
8 imposed by any political subdivision thereof.

9 7. "Business income" means entire net income minus investment income;

10 8. "Entire net income" means total net income from all sources, which
11 shall be presumably the same as the entire taxable income, but not
12 alternative minimum taxable income,

13 (i) which the taxpayer is required to report to the United States
14 treasury department, or

15 (ii) which the taxpayer would have been required to report to the
16 United States treasury department if it had not made an election under
17 subchapter s of chapter one of the internal revenue code, or

18 (iii) which the taxpayer, in the case of a corporation which is exempt
19 from federal income tax, other than the tax on unrelated business taxa-
20 ble income imposed under section five hundred eleven of the internal
21 revenue code, but which is subject to tax under this subchapter, would
22 have been required to report to the United States treasury department
23 but for such exemption, or

24 (iv) which the taxpayer would have been required to report to the
25 United States treasury department if no election had been made to treat
26 the taxpayer as a qualified subchapter s subsidiary under paragraph
27 three of subsection (b) of section thirteen hundred sixty-one of the
28 internal revenue code, except as provided in this paragraph, and subject
29 to any modification required by paragraphs (d) and (e) of subdivision
30 three of section 11-604 of this subchapter.

31 (a) Entire net income shall not include:

32 (1) income, gains and losses from subsidiary capital which do not
33 include the amount of a recovery in respect of any war loss;

34 (2) fifty percent of dividends other than from subsidiaries, except
35 that entire net income shall include one hundred percent of dividends on
36 shares of stock with respect to which a dividend deduction is disallowed
37 by subsection (c) of section two hundred forty-six of the internal
38 revenue code;

39 (2-a) any amounts treated as dividends pursuant to section seventy-
40 eight of the internal revenue code and not otherwise deductible under
41 subparagraphs one and two of this paragraph;

42 (3) bona fide gifts;

43 (4) income and deductions with respect to amounts received from school
44 districts and from corporations and associations, organized and operated
45 exclusively for religious, charitable or educational purposes, no part
46 of the net earnings of which inures to the benefit of any private share-
47 holder or individual, for the operation of school buses;

48 (5) any refund or credit of a tax imposed under this chapter, or
49 imposed by article nine or nine-A or thirty-two of the tax law as such
50 article was in effect on December thirty-first, two thousand fourteen,
51 for which tax no exclusion or deduction was allowed in determining the
52 taxpayer's entire net income under this subchapter or subchapter three
53 of this chapter for any prior year;

54 (6) in the case of a taxpayer who is separately or as a partner of a
55 partnership doing an insurance business as a member of the New York
56 insurance exchange described in section six thousand two hundred one of

1 the insurance law, any item of income, gain, loss or deduction of such
2 business which is the taxpayer's distributive or pro rata share for
3 federal income tax purposes or which the taxpayer is required to take
4 into account separately for federal income tax purposes;

5 (7) that portion of wages and salaries paid or incurred for the taxa-
6 ble year for which a deduction is not allowed pursuant to the provisions
7 of section two hundred eighty C of the internal revenue code;

8 (8) for taxable years beginning after December thirty-first, nineteen
9 hundred eighty-one, except with respect to property which is a qualified
10 mass commuting vehicle described in subparagraph (D) of paragraph eight
11 of subsection (f) of section one hundred sixty-eight of the internal
12 revenue code, relating to qualified mass commuting vehicles, and proper-
13 ty of a taxpayer principally engaged in the conduct of an aviation,
14 steamboat, ferry or navigation business, or two or more of such busi-
15 nesses, which is placed in service before taxable years beginning in
16 nineteen hundred eighty-nine, any amount which is included in the
17 taxpayer's federal taxable income solely as a result of an election made
18 pursuant to the provisions of such paragraph eight as it was in effect
19 for agreements entered into prior to January first, nineteen hundred
20 eighty-four;

21 (9) for taxable years beginning after December thirty-first, nineteen
22 hundred eighty-one, except with respect to property which is a qualified
23 mass commuting vehicle described in subparagraph (D) of paragraph eight
24 of subsection (f) of section one hundred sixty-eight of the internal
25 revenue code, relating to qualified mass commuting vehicles, and proper-
26 ty of a taxpayer principally engaged in the conduct of an aviation,
27 steamboat, ferry or navigation business, or two or more of such busi-
28 nesses, which is placed in service before taxable years beginning in
29 nineteen hundred eighty-nine, any amount which the taxpayer could have
30 excluded from federal taxable income had it not made the election
31 provided for in such paragraph eight as it was in effect for agreements
32 entered into prior to January first, nineteen hundred eighty-four;

33 (10) the amount deductible pursuant to paragraph (j) of this subdivi-
34 sion;

35 (11) upon the disposition of property to which paragraph (j) of this
36 subdivision applies, the amount, if any, by which the aggregate of the
37 amounts described in subparagraph eleven of paragraph (b) of this subdivi-
38 sion attributable to such property exceeds the aggregate of the
39 amounts described in paragraph (j) of this subdivision attributable to
40 such property;

41 (12) for taxable years ending after September tenth, two thousand one,
42 the amount deductible pursuant to paragraph (k) of this subdivision;

43 (13) the amount deductible pursuant to paragraph (o) of this subdivi-
44 sion;

45 (14) any amount excepted, for purposes of subsection (a) of section
46 one hundred eighteen of the internal revenue code, from the term
47 "contribution to the capital of the taxpayer" by paragraph two of
48 subsection (b) of section one hundred eighteen of the internal revenue
49 code;

50 (15) the amount of any gain added back to determine entire net income
51 in a previous taxable year pursuant to subparagraph nineteen of para-
52 graph (b) of this subdivision that is included in federal gross income
53 for the taxable year; and

54 (16) the amount of any grant received through either the COVID-19
55 pandemic small business recovery grant program, pursuant to section
56 sixteen-ff of the New York state urban development corporation act, or

1 the small business resilience grant program administered by the depart-
2 ment of small business services, to the extent the amount of either such
3 grant is included in federal taxable income.

4 (a-1) Notwithstanding any other provision of this subchapter, for
5 taxable years beginning on or after August first, two thousand two, in
6 the case of a taxpayer that is a partner in a partnership subject to the
7 tax imposed by chapter eleven of this title as a utility, as defined in
8 subdivision six of section 11-1101 of such chapter, entire net income
9 shall not include the taxpayer's distributive or pro rata share for
10 federal income tax purposes of any item of income, gain, loss or
11 deduction of such partnership, or any item of income, gain, loss or
12 deduction of such partnership that the taxpayer is required to take into
13 account separately for federal income tax purposes.

14 (b) Entire net income shall be determined without the exclusion,
15 deduction or credit of:

16 (1) the amount of any specific exemption or credit allowed in any law
17 of the United States imposing any tax on or measured by the income of
18 any corporation,

19 (2) any part of any income from dividends or interest on any kind of
20 stock, securities, or indebtedness, except as provided in clauses one
21 and two of paragraph (a) of this subdivision,

22 (3) taxes on or measured by profits or income paid or accrued to the
23 United States, any of its possessions or to any foreign country, includ-
24 ing taxes in lieu of any of the foregoing taxes otherwise generally
25 imposed by any foreign country or by any possession of the United
26 States, or taxes on or measured by profited or income paid or accrued to
27 the state or any subdivision thereof, including taxes paid or accrued
28 under article nine, nine-A, thirteen-A, twenty-four-A, or twenty-four-B
29 of the tax law or under article thirty-two of the tax law as such arti-
30 cle was in effect on December thirty-first, two thousand fourteen,

31 (3-a) taxes on or measured by profits or income, or which include
32 profits or income as a measure, paid or accrued to any other state of
33 the United States, or any political subdivision thereof, or to the
34 District of Columbia, including taxes expressly in lieu of any of the
35 foregoing taxes otherwise generally imposed by any other state of the
36 United States, or any political subdivision thereof, or the District of
37 Columbia;

38 (4) taxes imposed under this chapter,

39 (4-a) (A) the entire amount allowable as an exclusion or deduction for
40 stock transfer taxes imposed by article twelve of the tax law in deter-
41 mining the entire taxable income which the taxpayer is required to
42 report to the United States treasury department but only to the extent
43 that such taxes are incurred and paid in market making transactions, and

44 (B) the amount allowed as an exclusion or deduction for sales and use
45 taxes imposed by section eleven hundred seven of the tax law in deter-
46 mining the entire taxable income which the taxpayer is required to
47 report to the United States treasury department but only such portion of
48 such exclusion or deduction which is not in excess of the amount of the
49 credit allowed pursuant to subdivision twelve of section 11-604 of this
50 subchapter,

51 (4-b) the amount allowed as an exclusion or a deduction imposed by the
52 tax law in determining the entire taxable income which the taxpayer is
53 required to report to the United States treasury department but only
54 such portion of such exclusion or deduction which is not in excess of
55 the amount of the credit allowed pursuant to subdivision thirteen of
56 section 11-604 of this subchapter,

1 (4-c) the amount allowed as an exclusion or a deduction imposed by the
2 tax law in determining the entire taxable income which the taxpayer is
3 required to report to the United States treasury department but only
4 such portion of such exclusion or deduction which is not in excess of
5 the amount of the credit allowed pursuant to subdivision fourteen of
6 section 11-604 of this subchapter,

7 (4-d) the amount allowed as an exclusion or deduction for sales and
8 use taxes imposed by section eleven hundred seven of the tax law in
9 determining the entire taxable income which the taxpayer is required to
10 report to the United States Treasury Department, but only such portion
11 of such exclusion or deduction which is not in excess of the amount of
12 the credit allowed pursuant to subdivision fifteen of section 11-604 of
13 this chapter,

14 (4-g) The amount allowed as an exclusion or deduction for sales and
15 use taxes imposed by section eleven hundred seven of the tax law, or for
16 any interest imposed in connection therewith, in determining the entire
17 taxable income which the taxpayer is required to report to the United
18 States treasury department but only such portion of such exclusion or
19 deduction which is not in excess of the amount of the credit allowed
20 pursuant to subdivision seventeen-a of section 11-604 of this subchap-
21 ter.

22 (6) in the discretion of the commissioner of finance, any amount of
23 interest directly or indirectly and any other amount directly or indi-
24 rectly attributable as a carrying charge or otherwise to subsidiary
25 capital or to income, gains or losses from subsidiary capital,

26 (7) any amount by reason of the granting, issuing or assuming of a
27 restricted stock option, as defined in the internal revenue code of
28 nineteen hundred fifty-four, or by reason of the transfer of the share
29 of stock upon the exercise of the option, unless such share is disposed
30 of by the grantee of the option within two years from the date of the
31 granting of the option or within six months after the transfer of such
32 share to the grantee,

33 (8) in the case of a taxpayer who is separately or as a partner of a
34 partnership doing an insurance business as a member of the New York
35 insurance exchange described in section six thousand two hundred one of
36 the insurance law, such taxpayer's distributive or pro rata share of the
37 allocated entire net income of such business as determined under
38 sections fifteen hundred three and fifteen hundred four of the tax law,
39 provided however, in the event such allocated entire net income is a
40 loss, such taxpayer's distributive or pro rata share of such loss shall
41 not be subtracted from federal taxable income in computing entire net
42 income under this subdivision,

43 (9) 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, and proper-
48 ty of a taxpayer principally engaged in the conduct of an aviation,
49 steamboat, ferry or navigation business, or two or more of such busi-
50 nesses, which is placed in service before taxable years beginning in
51 nineteen hundred eighty-nine, any amount which the taxpayer claimed as a
52 deduction in computing its federal taxable income solely as a result of
53 an election made pursuant to the provisions of such paragraph eight as
54 it was in effect for agreements entered into prior to January first,
55 nineteen hundred eighty-four,

1 (10) for taxable years beginning after December thirty-first, nineteen
2 hundred eighty-one, except with respect to property which is a qualified
3 mass commuting vehicle described in subparagraph (D) of paragraph eight
4 of subsection (f) of section one hundred sixty-eight of the internal
5 revenue code, relating to qualified mass commuting vehicles, and proper-
6 ty of a taxpayer principally engaged in the conduct of an aviation,
7 steamboat, ferry or navigation business, or two or more of such busi-
8 nesses, which is placed in service before taxable years beginning in
9 nineteen hundred eighty-nine, any amount which the taxpayer would have
10 been required to include in the computation of its federal taxable
11 income had it not made the election permitted pursuant to such paragraph
12 eight as it was in effect for agreements entered into prior to January
13 first, nineteen hundred eighty-four,

14 (11) in the case of property placed in service in taxable years begin-
15 ning before nineteen hundred ninety-four, for taxable years beginning
16 after December thirty-first, nineteen hundred eighty-one, except with
17 respect to property subject to the provisions of section two hundred
18 eighty-F of the internal revenue code, property subject to the
19 provisions of section one hundred sixty-eight of the internal revenue
20 code which is placed in service in this state in taxable years beginning
21 after December thirty-first, nineteen hundred eighty-four and property
22 of a taxpayer principally engaged in the conduct of an aviation, steam-
23 boat, ferry or navigation business, or two or more of such businesses,
24 which is placed in service before taxable years beginning in nineteen
25 hundred eighty-nine, the amount allowable as a deduction determined
26 under section one hundred sixty-eight of the internal revenue code,

27 (12) upon the disposition of property to which paragraph (j) of this
28 subdivision applies, the amount, if any, by which the aggregate of the
29 amounts described in such paragraph (j) attributable to such property
30 exceeds the aggregate of the amounts described in subparagraph eleven of
31 this paragraph attributable to such property,

32 (13) for taxable years ending after September tenth, two thousand one,
33 in the case of qualified property described in paragraph two of
34 subsection k of section one hundred sixty-eight of the internal revenue
35 code, other than qualified resurgence zone property described in para-
36 graph (m) of this subdivision, and other than qualified New York Liberty
37 Zone property described in paragraph two of subsection b of section
38 fourteen hundred L of the internal revenue code, without regard to
39 clause (i) of subparagraph (C) of such paragraph, the amount allowable
40 as a deduction under section one hundred sixty-seven of the internal
41 revenue code,

42 (14) for taxable years beginning on or after January first, two thou-
43 sand four, in the case of a taxpayer that is not an eligible farmer as
44 defined in subsection (n) of section six hundred six of the tax law, the
45 amount allowable as a deduction under sections one hundred seventy-nine,
46 one hundred sixty-seven and one hundred sixty-eight of the internal
47 revenue code with respect to a sport utility vehicle that is not a
48 passenger automobile as defined in paragraph five of subsection (d) of
49 section two hundred eighty F of the internal revenue code,

50 (15) the amount of any deduction allowed pursuant to section one
51 hundred ninety-nine of the internal revenue code,

52 (16) the amount of any federal deduction for taxes imposed under arti-
53 cle twenty-three of the tax law,

54 (17) the amount of any federal deduction that would have been allowed
55 pursuant to subparagraph (A) of paragraph one of subdivision (a) of
56 section two hundred fifty of the internal revenue code if the taxpayer

1 had not made an election under subchapter s of chapter one of the inter-
2 nal revenue code,

3 (18) for taxable years beginning in two thousand nineteen and two
4 thousand twenty, the amount of the increase in the federal interest
5 deduction allowed pursuant to paragraph ten of subdivision (j) of
6 section one hundred sixty-three of the internal revenue code, and

7 (19) the amount of any gain excluded from federal gross income for the
8 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
9 section one thousand four hundred Z-two of the internal revenue code.

10 (c) Entire net income shall include income within and without the
11 United States;

12 (c-1)(1) Notwithstanding any other provision of this subchapter, in
13 the case of a taxpayer which is a foreign air carrier holding a foreign
14 air carrier permit issued by the United States department of transporta-
15 tion pursuant to section four hundred two of the federal aviation act of
16 nineteen hundred fifty-eight, as amended, and which is qualified under
17 subparagraph two of this paragraph, entire net income shall not include,
18 and shall be computed without the deduction of, amounts directly or
19 indirectly attributable to, (i) any income derived from the interna-
20 tional operation of aircraft as described in and subject to the
21 provisions of section eight hundred eighty-three of the internal revenue
22 code, (ii) income without the United States which is derived from the
23 operation of aircraft, and (iii) income without the United States which
24 is of a type described in subdivision (a) of section eight hundred
25 eighty-one of the internal revenue code except that it is derived from
26 sources without the United States. Entire net income shall include
27 income described in clauses (i), (ii) and (iii) of this subparagraph in
28 the case of taxpayers not described in this subparagraph.

29 (2) A taxpayer is qualified under this subparagraph if air carriers
30 organized in the United States and operating in the foreign country or
31 countries in which the taxpayer has its major base of operations and in
32 which it is organized, resident or headquartered, if not in the same
33 country as its major base of operations, are not subject to any income
34 tax or other tax based on or measured by income or receipts imposed by
35 such foreign country or countries or any political subdivision thereof,
36 or if so subject to such tax, are provided an exemption from such tax
37 equivalent to that provided for in this paragraph.

38 (d) The commissioner of finance may, whenever necessary in order prop-
39 erly to reflect the entire net income of any taxpayer, determine the
40 year or period in which any item of income or deduction shall be
41 included, without regard to the method of accounting employed by the
42 taxpayer;

43 (e) The entire net income of any bridge commission created by act of
44 congress to construct a bridge across an international boundary means
45 its gross income less the expense of maintaining and operating its prop-
46 erties, the annual interest upon its bonds and other obligations, and
47 the annual charge for the retirement of such bonds or obligations at
48 maturity;

49 (f) A net operating loss deduction shall be allowed which shall be the
50 same as the net operating loss deduction allowed under section one
51 hundred seventy-two of the internal revenue code or which would have
52 been allowed if the taxpayer had not made an election under subchapter s
53 of chapter one of the internal revenue code, except that in every
54 instance where such deduction is allowed under this subchapter:

55 (1) any net operating loss included in determining such deduction
56 shall be adjusted to reflect the inclusions and exclusions from entire

1 net income pursuant to paragraphs (a), (b), (g) and (h) of this subdivi-
2 sion,

3 (2) such deductions shall not include any net operating loss sustained
4 during any taxable year in which the taxpayer was not subject to the tax
5 imposed by this subchapter,

6 (3) such deduction shall not exceed the deduction for the taxable year
7 allowed under section one hundred seventy-two of the internal revenue
8 code, or the deduction for the taxable year which would have been
9 allowed if the taxpayer had not made an election under subchapter s of
10 chapter one of the internal revenue code,

11 (4) any net operating loss for a taxable year beginning in nineteen
12 hundred eighty-one shall be computed without regard to the deduction
13 allowed with respect to recovery property under section one hundred
14 sixty-eight of the internal revenue code; in lieu of such deduction, a
15 taxpayer shall be allowed for such taxable year with respect to such
16 property the depreciation deduction allowable under section one hundred
17 sixty-seven of such code as such section was in full force and effect on
18 December thirty-first, nineteen hundred eighty, and

19 (5) the net operating loss deduction allowed under section one hundred
20 seventy-two of the internal revenue code shall for purposes of this
21 paragraph be determined as if the taxpayer had elected under such
22 section to relinquish the entire carryback period with respect to net
23 operating losses, except with respect to the first ten thousand dollars
24 of each of such losses, sustained during taxable years ending after June
25 thirtieth, nineteen hundred eighty-nine.

26 (6) Notwithstanding any other provision of this subchapter to the
27 contrary, for taxable years beginning before January first, two thousand
28 twenty-one, any amendment to section one hundred seventy-two of the
29 internal revenue code made after March first, two thousand twenty shall
30 not apply to this subchapter.

31 (g) At the election of the taxpayer, a deduction shall be allowed for
32 expenditures paid or incurred during the taxable year for the
33 construction, reconstruction, erection or improvement of industrial
34 waste treatment facilities and air pollution control facilities.

35 (1)(A) The term "industrial waste treatment facilities" shall mean
36 facilities for the treatment, neutralization or stabilization of indus-
37 trial waste, as the term "industrial waste" is defined in section
38 17-0105 of the environmental conservation law, from a point immediately
39 preceding the point of such treatment, neutralization or stabilization
40 to the point of disposal, including the necessary pumping and transmit-
41 ting facilities, but excluding such facilities installed for the primary
42 purpose of salvaging materials which are usable in the manufacturing
43 process or are marketable.

44 (B) The term "air pollution control facilities" shall mean facilities
45 which remove, reduce, or render less noxious air contaminants emitted
46 from an air contamination source, as the terms "air contaminant" and
47 "air contamination source" are defined in section 19-0107 of the envi-
48 ronmental conservation law, from a point immediately preceding the point
49 of such removal, reduction or rendering to the point of discharge of
50 air, meeting emission standards as established by the air pollution
51 control board, but excluding such facilities installed for the primary
52 purpose of salvaging materials which are usable in the manufacturing
53 process or are marketable and excluding those facilities which rely for
54 their efficacy on dilution, dispersion or assimilation of air contam-
55 inants in the ambient air after emission.

1 (2) However, such deduction shall be allowed only (A) with respect to
2 tangible property which is depreciable, pursuant to section one hundred
3 sixty-seven of the internal revenue code, having a situs in the city and
4 used in the taxpayer's trade or business, the construction, recon-
5 struction, erection or improvement of which, in the case of industrial
6 waste treatment facilities, is initiated on or after January first,
7 nineteen hundred sixty-six, and only for expenditures paid or incurred
8 prior to January first, nineteen hundred seventy-two, or which, in the
9 case of air pollution control facilities, is initiated on or after Janu-
10 ary first, nineteen hundred sixty-six, and

11 (B) on condition that such facilities have been certified by the state
12 commissioner of environmental conservation or the state commissioner's
13 designated representative, in the same manner as provided for in section
14 17-0707 or 19-0309 of the environmental conservation law, as applicable,
15 as complying with applicable provisions of the environmental conserva-
16 tion law, the state sanitary code and regulations, permits or orders
17 issued pursuant thereto, and

18 (C) on condition that entire net income for the taxable year and all
19 succeeding taxable years be computed without any deductions for such
20 expenditures or for depreciation of the same property other than the
21 deductions allowed by this paragraph except to the extent that the basis
22 of the property may be attributable to factors other than such expendi-
23 tures, or in case a deduction is allowable pursuant to this paragraph
24 for only a part of such expenditures, on condition that any deduction
25 allowed for federal income tax purposes for such expenditures or for
26 depreciation of the same property be proportionately reduced in comput-
27 ing entire net income for the taxable year and all succeeding taxable
28 years, and

29 (D) where the election provided for in paragraph (d) of subdivision
30 three of section 11-604 of this subchapter has not been exercised in
31 respect to the same property.

32 (3)(A) If expenditures in respect to an industrial waste treatment
33 facility or an air pollution control facility have been deducted as
34 provided herein and if within ten years from the end of the taxable year
35 in which such deduction was allowed such property or any part thereof is
36 used for the primary purpose of salvaging materials which are usable in
37 the manufacturing process or are marketable, the taxpayer shall report
38 such change of use in its report for the first taxable year during which
39 it occurs, and the commissioner of finance may recompute the tax for the
40 year or years for which such deduction was allowed and any carryback or
41 carryover year, and may assess any additional tax resulting from such
42 recomputation within the time fixed by paragraph (h) of subdivision
43 three of section 11-674 of this chapter.

44 (B) If a deduction is allowed as herein provided for expenditures paid
45 or incurred during any taxable year on the basis of a temporary certif-
46 icate of compliance issued pursuant to the environmental conservation
47 law and if the taxpayer fails to obtain a permanent certificate of
48 compliance upon completion of the facilities with respect to which such
49 temporary certificate was issued, the taxpayer shall report such failure
50 in its report for the taxable year during which such facilities are
51 completed, and the commissioner of finance may recompute the tax for the
52 year or years for which such deduction was allowed and any carryback or
53 carryover year, and may assess any additional tax resulting from such
54 recomputation within the time fixed by paragraph (h) of subdivision
55 three of section 11-674 of this chapter.

1 (4) In any taxable year when property is sold or otherwise disposed
2 of, with respect to which a deduction has been allowed pursuant to this
3 paragraph, such deduction shall be disregarded in computing gain or
4 loss, and the gain or loss on the sale or other disposition of such
5 property shall be the gain or loss entering into the computation of
6 entire taxable income which the taxpayer is required to report to the
7 United States treasury for such taxable year;

8 (h) With respect to gain derived from the sale or other disposition of
9 any property acquired prior to January first, nineteen hundred sixty-
10 six; which had a federal adjusted basis on such date, or on the date of
11 its sale or other disposition prior to January first, nineteen hundred
12 sixty-six, lower than its fair market value on January first, nineteen
13 hundred sixty-six or the date of its sale or other disposition prior
14 thereto, except property described in subsections one and four of
15 section twelve hundred twenty-one of the internal revenue code, there
16 shall be deducted from entire net income, the difference between (1) the
17 amount of the taxpayer's federal taxable income, and (2) the amount of
18 the taxpayer's federal taxable income, if smaller than the amount
19 described in subparagraph one of this paragraph computed as if the
20 federal adjusted basis of each such property on the sale or other dispo-
21 sition of which gain was derived, on the date of the sale or other
22 disposition had been equal to either (A) its fair market value on Janu-
23 ary first, nineteen hundred sixty-six or the date of its sale or other
24 disposition prior to January first, nineteen hundred sixty-six, plus or
25 minus all adjustments to basis made with respect to such property for
26 federal income tax purposes for periods on and after January first,
27 nineteen hundred sixty-six or (B) the amount realized from its sale or
28 disposition, whichever is lower; provided, however, that the total
29 modification provided by this paragraph shall not exceed the amount of
30 the taxpayer's net gain from the sale or other disposition of all such
31 property.

32 (i) If the period covered by a report under this subchapter is other
33 than the period covered by the report of the United States treasury
34 department, entire net income shall be determined by multiplying the
35 federal taxable income, as adjusted pursuant to the provisions of this
36 subchapter, by the number of calendar months or major parts thereof
37 covered by the report under this subchapter and dividing by the number
38 of calendar months or major parts thereof covered by the report to such
39 department.

40 If it shall appear that such method of determining entire net income
41 does not properly reflect the taxpayer's income during the period
42 covered by the report under this subchapter, the commissioner of finance
43 shall be authorized in his or her discretion to determine such entire
44 net income solely on the basis of the taxpayer's income during the peri-
45 od covered by its report under this subchapter.

46 (j) In the case of property placed in service in taxable years begin-
47 ning before nineteen hundred ninety-four, for taxable years beginning
48 after December thirty-first, nineteen hundred eighty-one, except with
49 respect to property subject to the provisions of section two hundred
50 eighty-F of the internal revenue code and property subject to the
51 provisions of section one hundred sixty-eight of the internal revenue
52 code which is placed in service in this state in taxable years beginning
53 after December thirty-first, nineteen hundred eighty-four, and provided
54 a deduction has not been excluded from entire net income pursuant to
55 subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall
56 be allowed with respect to property which is subject to the provisions

1 of section one hundred sixty-eight of the internal revenue code the
2 depreciation deduction allowable under section one hundred sixty-seven
3 of the internal revenue code as such section would have applied to prop-
4 erty placed in service on December thirty-first, nineteen hundred
5 eighty. This paragraph shall not apply to property of a taxpayer princi-
6 pally engaged in the conduct of an aviation, steamboat, ferry or naviga-
7 tion business, or two or more of such businesses, which is placed in
8 service before taxable years beginning in nineteen hundred eighty-nine.

9 (k) for taxable years ending after September tenth, two thousand one,
10 in the case of qualified property described in paragraph two of
11 subsection k of section one hundred sixty-eight of the internal revenue
12 code, other than qualified resurgence zone property described in para-
13 graph (m) of this subdivision, and other than qualified New York Liberty
14 Zone property described in paragraph two of subsection b of section
15 fourteen hundred L of the internal revenue code, without regard to
16 clause (i) of subparagraph (C) of such paragraph, the depreciation
17 deduction allowable under section one hundred sixty-seven as such
18 section would have applied to such property had it been acquired by the
19 taxpayer on September tenth, two thousand one, provided, however, that
20 for taxable years beginning on or after January first, two thousand
21 four, in the case of a passenger motor vehicle or a sport utility vehi-
22 cle subject to the provisions of paragraph (o) of this subdivision, the
23 limitation under clause (i) of subparagraph (A) of paragraph one of
24 subdivision (a) of section two hundred eighty-F of the internal revenue
25 code applicable to the amount allowed as a deduction under this para-
26 graph shall be determined as of the date such vehicle was placed in
27 service and not as of September tenth, two thousand one.

28 (l) for taxable years ending after September tenth, two thousand one,
29 upon the disposition of property to which paragraph (k) of this subdivi-
30 sion applies, the amount of any gain or loss includible in entire net
31 income shall be adjusted to reflect the inclusions and exclusions from
32 entire net income pursuant to subparagraph twelve of paragraph (a) and
33 subparagraph thirteen of paragraph (b) of this subdivision attributable
34 to such property.

35 (m) for purposes of this paragraph and paragraph (l) of this subdivi-
36 sion, qualified resurgence zone property shall mean qualified property
37 described in paragraph two of subsection k of section one hundred
38 sixty-eight of the internal revenue code substantially all of the use of
39 which is in the resurgence zone, as defined in this paragraph, and is in
40 the active conduct of a trade or business by the taxpayer in such zone,
41 and the original use of which in the resurgence zone commences with the
42 taxpayer after September tenth, two thousand one. The resurgence zone
43 shall mean the area of New York county bounded on the south by a line
44 running from the intersection of the Hudson River with the Holland
45 Tunnel, and running thence east to Canal Street, then running along the
46 centerline of Canal Street to the intersection of the Bowery and Canal
47 Street, running thence in a southeasterly direction diagonally across
48 Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the
49 centerline of the Manhattan Bridge to the point where the centerline of
50 the Manhattan Bridge would intersect with the easterly bank of the East
51 River, and bounded on the north by a line running from the intersection
52 of the Hudson River with the Holland Tunnel and running thence north
53 along West Avenue to the intersection of Clarkson Street then running
54 east along the centerline of Clarkson Street to the intersection of
55 Washington Avenue, then running south along the centerline of Washington
56 Avenue to the intersection of West Houston Street, then east along the

1 centerline of West Houston Street, then at the intersection of the
2 Avenue of the Americas continuing east along the centerline of East
3 Houston Street to the easterly bank of the East River.

4 (n) Related members expense add back.

5 (1) Definitions. (A) Related member. "Related member" means a related
6 person as defined in subparagraph (c) of paragraph three of subsection
7 (b) of section four hundred sixty-five of the internal revenue code,
8 except that "fifty percent" shall be substituted for "ten percent".

9 (B) Effective rate of tax. "Effective rate of tax" means, as to any
10 city, the maximum statutory rate of tax imposed by the city on or meas-
11 ured by a related member's net income multiplied by the apportionment
12 percentage, if any, applicable to the related member under the laws of
13 said jurisdiction. For purposes of this definition, the effective rate
14 of tax as to any city is zero where the related member's net income tax
15 liability in said city is reported on a combined or consolidated return
16 including both the taxpayer and the related member where the reported
17 transactions between the taxpayer and the related member are eliminated
18 or offset. Also, for purposes of this definition, when computing the
19 effective rate of tax for a city in which a related member's net income
20 is eliminated or offset by a credit or similar adjustment that is
21 dependent upon the related member either maintaining or managing intan-
22 gible property or collecting interest income in that city, the maximum
23 statutory rate of tax imposed by said city shall be decreased to reflect
24 the statutory rate of tax that applies to the related member as effec-
25 tively reduced by such credit or similar adjustment.

26 (C) Royalty payments. Royalty payments are payments directly connected
27 to the acquisition, use, maintenance or management, ownership, sale,
28 exchange, or any other disposition of licenses, trademarks, copyrights,
29 trade names, trade dress, service marks, mask works, trade secrets,
30 patents and any other similar types of intangible assets as determined
31 by the commissioner of finance, and include amounts allowable as inter-
32 est deductions under section one hundred sixty-three of the internal
33 revenue code to the extent such amounts are directly or indirectly for,
34 related to or in connection with the acquisition, use, maintenance or
35 management, ownership, sale, exchange or disposition of such intangible
36 assets.

37 (D) Valid business purpose. A valid business purpose is one or more
38 business purposes, other than the avoidance or reduction of taxation,
39 which alone or in combination constitute the primary motivation for some
40 business activity or transaction, which activity or transaction changes
41 in a meaningful way, apart from tax effects, the economic position of
42 the taxpayer. The economic position of the taxpayer includes an increase
43 in the market share of the taxpayer, or the entry by the taxpayer into
44 new business markets.

45 (2) Royalty expense add backs. (A) For the purpose of computing entire
46 net income or other applicable taxable basis, a taxpayer must add back
47 royalty payments directly or indirectly paid, accrued, or incurred in
48 connection with one or more direct or indirect transactions with one or
49 more related members during the taxable year to the extent deductible in
50 calculating federal taxable income.

51 (B) (i) The adjustment required in this paragraph shall not apply to
52 the portion of the royalty payment that the taxpayer establishes, by
53 clear and convincing evidence of the type and in the form specified by
54 the commissioner of finance, meets all of the following requirements:
55 (I) the related member was subject to tax in this city or another city
56 within the United States or a foreign nation or some combination thereof

1 on a tax base that included the royalty payment paid, accrued or
2 incurred by the taxpayer; (II) the related member during the same taxa-
3 ble year directly or indirectly paid, accrued or incurred such portion
4 to a person that is not a related member; and (III) the transaction
5 giving rise to the royalty payment between the taxpayer and the related
6 member was undertaken for a valid business purpose.

7 (ii) The adjustment required in this paragraph shall not apply if the
8 taxpayer establishes, by clear and convincing evidence of the type and
9 in the form specified by the commissioner of finance, that: (I) the
10 related member was subject to tax on or measured by its net income in
11 this city or another city within the United States, or some combination
12 thereof; (II) the tax base for said tax included the royalty payment
13 paid, accrued or incurred by the taxpayer; and (III) the aggregate
14 effective rate of tax applied to the related member in those jurisdic-
15 tions is no less than eighty percent of the statutory rate of tax that
16 applied to the taxpayer under section 11-604 of this subchapter for the
17 taxable year.

18 (iii) The adjustment required in this paragraph shall not apply if the
19 taxpayer establishes, by clear and convincing evidence of the type and
20 in the form specified by the commissioner of finance, that: (I) the
21 royalty payment was paid, accrued or incurred to a related member organ-
22 ized under the laws of a country other than the United States; (II) the
23 related member's income from the transaction was subject to a comprehen-
24 sive income tax treaty between such country and the United States; (III)
25 the related member was subject to tax in a foreign nation on a tax base
26 that included the royalty payment paid, accrued or incurred by the
27 taxpayer; (IV) the related member's income from the transaction was
28 taxed in such country at an effective rate of tax at least equal to that
29 imposed by this city; and (V) the royalty payment was paid, accrued or
30 incurred pursuant to a transaction that was undertaken for a valid busi-
31 ness purpose and using terms that reflect an arm's length relationship.

32 (iv) The adjustment required in this paragraph shall not apply if the
33 taxpayer and the commissioner of finance agree in writing to the appli-
34 cation or use of alternative adjustments or computations. The commis-
35 sioner of finance may, in his or her discretion, agree to the applica-
36 tion or use of alternative adjustments or computations when he or she
37 concludes that in the absence of such agreement the income of the
38 taxpayer would not be properly reflected.

39 (o) For taxable years beginning on or after January first, two thou-
40 sand four, in the case of a taxpayer that is not an eligible farmer as
41 defined in subsection (n) of section six hundred six of the tax law, the
42 deductions allowable under sections one hundred seventy-nine, one
43 hundred sixty-seven and one hundred sixty-eight of the internal revenue
44 code with respect to a sport utility vehicle that is not a passenger
45 automobile as defined in paragraph five of subsection (d) of section two
46 hundred eighty-F of the internal revenue code, determined as if such
47 sport utility vehicle were a passenger automobile as defined in such
48 paragraph five. For purposes of paragraph (k) and subparagraph thirteen
49 of paragraph (b) of this subdivision, the terms qualified resurgence
50 zone property and qualified New York Liberty Zone property described in
51 paragraph two of subsection b of section fourteen hundred-L of the
52 internal revenue code shall not include any sport utility vehicle that
53 is not a passenger automobile as defined in paragraph five of subsection
54 (d) of section two hundred eighty-F of the internal revenue code.

55 (p) Upon the disposition of property to which paragraph (o) of this
56 subdivision applies, the amount of any gain or loss includible in entire

1 net income shall be adjusted to reflect the inclusions and exclusions
2 from entire net income pursuant to subparagraph thirteen of paragraph
3 (a) and subparagraph fourteen of paragraph (b) of this subdivision
4 attributable to such property.

5 9. (a) The term "calendar year" means a period of twelve calendar
6 months, or any shorter period beginning on the date the taxpayer becomes
7 subject to the tax imposed by this subchapter, ending on the thirty-
8 first day of December, provided the taxpayer keeps its books on the
9 basis of such period or on the basis of any period ending on any day
10 other than the last day of a calendar month, or provided the taxpayer
11 does not keep books, and includes, in case the taxpayer changes the
12 period on the basis of which it keeps its books from a fiscal year to a
13 calendar year, the period from the close of its last old fiscal year up
14 to and including the following December thirty-first.

15 (b) The term "fiscal year" means a period of twelve calendar months,
16 or any shorter period beginning on the date the taxpayer becomes subject
17 to the tax imposed by this subchapter, ending on the last day of any
18 month other than December, provided the taxpayer keeps its books on the
19 basis of such period, and includes, in case the taxpayer changes the
20 period on the basis of which it keeps its books from a calendar year to
21 a fiscal year or from one fiscal year to another fiscal year, the period
22 from the close of its last old calendar or fiscal year up to the date
23 designated as the close of its new fiscal year.

24 10. The term "tangible personal property" means corporeal personal
25 property, such as machinery, tools, implements, goods, wares and
26 merchandise, and does not mean money, deposits in banks, shares of
27 stock, bonds, notes, credits or evidence of an interest property and
28 evidences of debt.

29 § 11-603 Imposition of tax; exemptions. 1. For the privilege of doing
30 business, or of employing capital, or of owning or leasing property in
31 the city in a corporate or organized capacity, or of maintaining an
32 office in the city, for all or any part of each of its fiscal or calen-
33 dar years, every domestic or foreign corporation, except corporations
34 specified in subdivision four of this section, shall annually pay a tax,
35 upon the basis of its entire net income, or upon such other basis as may
36 be applicable as provided by this section, for such fiscal or calendar
37 year or part thereof, on a report which shall be filed, except as
38 provided by this section, on or before the fifteenth day of March next
39 succeeding the close of each such year, or, in the case of a taxpayer
40 which reports on the basis of a fiscal year, within two and one-half
41 months after the close of such fiscal year, and shall be paid as
42 provided by this section.

43 2. A corporation shall not be deemed to be doing business, employing
44 capital, owning or leasing property, or maintaining an office in the
45 city, for the purposes of this subchapter, by reason of (a) the mainte-
46 nance of cash balances with banks or trust companies in the city, or (b)
47 the ownership of shares of stock or securities kept in the city, if kept
48 in a safe deposit box, safe, vault or other receptacle rented for the
49 purpose, or if pledged as collateral security, or if deposited with one
50 or more banks or trust companies, or brokers who are members of a recog-
51 nized security exchange, in safekeeping or custody accounts, or (c) the
52 taking of any action by any such bank or trust company or broker, which
53 is incidental to the rendering of safekeeping or custodian service to
54 such corporation, or (d) the maintenance of an office in the city by one
55 or more officers or directors of the corporation who are not employees
56 of the corporation if the corporation otherwise is not doing business in

1 the city, and does not employ capital or own or lease property in the
2 city, or (e) the keeping of books or records of a corporation in the
3 city if such books or records are not kept by employees of such corpo-
4 ration and such corporation does not otherwise do business, employ capi-
5 tal, own or lease property or maintain an office in the city, or (f) any
6 combination of the activities described in this subdivision.

7 2-a. An alien corporation shall not be deemed to be doing business,
8 employing capital, owning or leasing property, or maintaining an office
9 in the city, for the purposes of this subchapter, if its activities in
10 the city are limited solely to (a) investing or trading in stocks and
11 securities for its own account within the meaning of clause (ii) of
12 subparagraph (A) of paragraph (2) of subsection (b) of section eight
13 hundred sixty-four of the internal revenue code or (b) investing or
14 trading in commodities for its own account within the meaning of clause
15 (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section
16 eight hundred sixty-four of the internal revenue code or (c) any combi-
17 nation of activities described in paragraphs (a) and (b) of this subdivi-
18 sion. For purposes of this subdivision, an alien corporation is a
19 corporation organized under the laws of a country, or any political
20 subdivision thereof, other than the United States.

21 3. Any receiver, referee, trustee, assignee or other fiduciary, or
22 any officer or agent appointed by any court, who conducts the business
23 of any corporation, shall be subject to the tax imposed by this subchap-
24 ter in the same manner and to the same extent as if the business were
25 conducted by the agents or officers of such corporation. A dissolved
26 corporation which continues to conduct business shall also be subject to
27 the tax imposed by this subchapter.

28 4. (a) Corporations subject to tax under subchapter three of this
29 chapter or under chapter eleven of this title, any trust company organ-
30 ized under a law of this state all of the stock of which is owned by not
31 less than twenty savings banks organized under a law of this state, bank
32 holding companies filing a combined return in accordance with subdivi-
33 sion (f) of section 11-646 of this chapter, a captive REIT or a captive
34 RIC filing a combined return under subdivision (f) of section 11-646 of
35 this chapter, housing companies organized and operating pursuant to the
36 provisions of article two of the private housing finance law, housing
37 development fund companies organized pursuant to the provisions of arti-
38 cle eleven of the private housing finance law, corporations described in
39 section three of the tax law, a corporation principally engaged in the
40 operation of marine vessels whose activities in the city are limited
41 exclusively to the use of property in interstate or foreign commerce,
42 provided, however, such a corporation will not be subject to tax under
43 this subchapter solely because it maintains an office in the city, or
44 employs capital in the city, in connection with such use of property, a
45 corporation principally engaged in the conduct of a ferry business and
46 operating between any of the boroughs of the city under a lease granted
47 by the city and a corporation principally engaged in the conduct of an
48 aviation, steamboat, ferry or navigation business, or two or more of
49 such businesses, all of the capital stock of which is owned by a munici-
50 pal corporation of this state, shall not be subject to tax under this
51 subchapter; provided, however, that any corporation, other than (1) a
52 utility corporation subject to the supervision of the state department
53 of public service, and (2) for taxable years beginning on or after
54 August first, two thousand two, a utility as defined in subdivision six
55 of section 11-1101 of this title, which is subject to tax under chapter
56 eleven of this title as a vendor of utility services shall be subject to

1 tax under this subchapter, but in computing the tax imposed by this
2 section pursuant to the provisions of clause one of subparagraph (a) of
3 paragraph A of subdivision one of section 11-604 of this subchapter,
4 business income allocated to the city pursuant to paragraph (a) of
5 subdivision three of such section shall be reduced by the percentage
6 which such corporation's gross operating income subject to tax under
7 chapter eleven of this title is of its gross operating income.

8 (b) The term "gross operating income", when used in paragraph (a) of
9 this subdivision, means receipts received in or by reason of any trans-
10 action had and consummated in the city, including cash, credits and
11 property of any kind or nature, whether or not such transaction is made
12 for profit, without any deduction therefrom on account of the cost of
13 the property sold, the cost of materials used, labor or other services,
14 delivery costs or any other costs whatsoever, interest or discount paid
15 or any other expenses whatsoever.

16 (c) If it shall appear to the commissioner of finance that the appli-
17 cation of the proviso of paragraph (a) of this subdivision, does not
18 fairly and equitably reflect the portion of the taxpayer's business
19 income allocable to the city which is attributable to its city activ-
20 ities which are not taxable under chapter eleven of this title, the
21 commissioner may prescribe other means or methods of determining such
22 portion, including the use of the books and records of the taxpayer, if
23 the commissioner finds that such means or methods used in keeping them
24 fairly and equitably reflect such portion.

25 5. The tax imposed by subdivision one of this section, with the
26 modifications provided by subdivision six of this section, is imposed
27 for each calendar or fiscal year beginning with calendar or fiscal years
28 ending in or with the calendar year nineteen hundred sixty-six.

29 6. (a) The tax for any taxable year ending prior to December thirty-
30 first, nineteen hundred sixty-six shall be an amount equal to the tax
31 imposed by subdivision one of this section for such taxable year, multi-
32 plied by the number of months, or major portions thereof, in such taxa-
33 ble year which occur after December thirty-first, nineteen hundred
34 sixty-five and divided by the number of months, or major portions there-
35 of, in such taxable year.

36 (b) In lieu of the method of computation of tax prescribed in para-
37 graph (a) of this subdivision, if the taxpayer maintained adequate
38 records for the portion of any taxable year ending prior to December
39 thirty-first, nineteen hundred sixty-six, which portion falls within the
40 calendar year nineteen hundred sixty-six, it may elect to compute the
41 tax for such taxable year by determining entire net income on the basis
42 of the entire taxable income which it would have reported for federal
43 income tax purposes had it filed a federal income tax return for a taxa-
44 ble year beginning January first, nineteen hundred sixty-six and ending
45 with the close of its actual taxable year and such taxable year begin-
46 ning January first, nineteen hundred sixty-six, shall be deemed to be
47 the period covered by its report, except that in computing such tax any
48 portion of a capital loss which results from a capital loss carryover
49 and any net operating loss deduction, as modified pursuant to paragraph
50 (f) of subdivision eight of section 11-602 of this subchapter, shall be
51 reduced by the same part of such portion of such capital loss or of such
52 net operating loss deduction, as the case may be, as the number of
53 months, or major portions thereof, in the taxable year occurring before
54 January first, nineteen hundred sixty-six is of the number of months, or
55 major portions thereof, in such taxable year.

1 7. For any taxable year of a real estate investment trust as defined
2 in section eight hundred fifty-six of the internal revenue code in which
3 such trust is subject to federal income taxation under section eight
4 hundred fifty-seven of such code, such trust shall be subject to a tax
5 computed under either clause one of subparagraph (a) of paragraph A of
6 subdivision one of section 11-604 of this subchapter with respect to its
7 entire net income, or clause four of such subparagraph, whichever is
8 greater, and shall not be subject to any tax under subchapter three of
9 this chapter, except for a captive REIT required to file a combined
10 return under subdivision (f) of section 11-646 of this chapter. In the
11 case of such a real estate investment trust, including a captive REIT as
12 defined in section 11-601 of this chapter, the term "entire net income"
13 means "real estate investment trust taxable income" as defined in para-
14 graph two of subdivision (b) of section eight hundred fifty-seven, as
15 modified by section eight hundred fifty-eight, of the internal revenue
16 code plus the amount taxable under paragraph three of subdivision (b) of
17 section eight hundred fifty-seven of such code, subject to the modifica-
18 tion required by subdivision eight of section 11-602 of this subchapter,
19 other than the modification required by clause two of paragraph (a) and
20 by paragraph (f) thereof, including the modifications required by para-
21 graphs (d) and (e) of subdivision three of section 11-604 of this
22 subchapter.

23 8. For any taxable year beginning on or after January first, nineteen
24 hundred eighty-one of a regulated investment company, as defined in
25 section eight hundred fifty-one of the internal revenue code, in which
26 such company is subject to federal income taxation under section eight
27 hundred fifty-two of such code, such company shall be subject to a tax
28 computed under clause one or four of subparagraph (a) of paragraph E of
29 subdivision one of section 11-604 of this subchapter, whichever is
30 greater, and such company shall not be subject to any tax under subchap-
31 ter three of this chapter. The term "entire net income" used in subdivi-
32 sion one of this section means "investment company taxable income" as
33 defined in paragraph two of subdivision (b) of section eight hundred
34 fifty-two, as modified by section eight hundred fifty-five, of the
35 internal revenue code plus the amount taxable under paragraph three of
36 subdivision (b) of section eight hundred fifty-two of such code subject
37 to the modifications required by subdivision eight of section 11-602 of
38 this subchapter, other than the modification required by clause two of
39 paragraph (a) and by paragraph (f) of such subdivision, including the
40 modification required by paragraphs (d) and (e) of subdivision three of
41 section 11-604 of this subchapter.

42 9. For any taxable year beginning on or after January first, nineteen
43 hundred eighty-seven, an organization described in paragraph two or
44 twenty-five of subdivision (c) of section five hundred one of the inter-
45 nal revenue code of nineteen hundred eighty-six shall be exempt from all
46 taxes imposed by this chapter.

47 § 11-604 Computation of tax. 1. A. For taxable years beginning on or
48 after January first, nineteen hundred seventy-one and ending on or
49 before December thirty-first, nineteen hundred seventy-four, and for
50 taxable years beginning on or after January first, nineteen hundred
51 seventy-six, the tax imposed by subdivision one of section 11-603 of
52 this subchapter shall be, in the case of each taxpayer: (a) a tax (1)
53 computed at the rate of six and seven-tenths per centum of its entire
54 net income, or the portion of such entire net income allocated within
55 the city as provided in this section, subject to any modification
56 required by paragraphs (d) and (e) of subdivision three of this section,

1 or (2) computed at one mill for each dollar of its total business and
2 investment capital, or the portion thereof allocated within the city, as
3 provided in this section, except that in the case of a cooperative hous-
4 ing corporation as defined in the internal revenue code, or in the case
5 of a housing company organized and operating pursuant to the provisions
6 of article four of the private housing finance law, the applicable rates
7 shall be one-quarter of one mill, or (3) computed at the rate of six and
8 seven-tenths per centum on thirty per centum of the taxpayer's entire
9 net income plus salaries and other compensation paid to the taxpayer's
10 elected or appointed officers and to every stockholder owning in excess
11 of five per centum of its issued capital stock minus fifteen thousand
12 dollars, except as provided in this section, and any net loss for the
13 reported year, or on the portion of any such sum allocated within the
14 city as provided in this section for the allocation of entire net
15 income, subject to any modification required by paragraphs (d) and (e)
16 of subdivision three of this section, or (4) twenty-five dollars, which-
17 ever is greatest, plus (b) a tax computed at the rate of one-half mill
18 for each dollar of the portion of its subsidiary capital allocated with-
19 in the city as provided in this section. In the case of a taxpayer
20 which is not subject to tax for an entire year, the exemption allowed in
21 clause three of subparagraph (a) of this paragraph shall be prorated
22 according to the period such taxpayer was subject to tax.

23 B. For taxable years beginning on or after January first, nineteen
24 hundred seventy-five and before January first nineteen hundred seventy-
25 seven, the tax imposed by subdivision one of section 11-603 of this
26 subchapter shall be, in the case of each taxpayer: (a) a tax (1)
27 computed at the rate of ten and five one-hundredths per centum of its
28 entire net income, or the portion of such entire net income allocated
29 within the city as provided in this paragraph, subject to any modifica-
30 tion required by paragraphs (d) and (e) of subdivision three of this
31 section, or (2) computed at one and one-half mills for each dollar of
32 its total business and investment capital, or the portion thereof allo-
33 cated within the city, as provided in this paragraph, except that in the
34 case of a cooperative housing corporation as defined in the internal
35 revenue code, or in the case of a housing company organized and operat-
36 ing pursuant to the provisions of article four of the private housing
37 finance law, the applicable rate shall be four-tenths of one mill, or
38 (3) computed at the rate of ten and five one-hundredths per centum on
39 thirty per centum of the taxpayer's entire net income plus salaries and
40 other compensation paid to the taxpayer's elected or appointed officers
41 and to every stockholder owning in excess of five per centum of its
42 issued capital stock minus fifteen thousand dollars, except as provided
43 in this paragraph, and any net loss for the reported year, or on the
44 portion of any such sum allocated within the city as provided in this
45 paragraph for the allocation of entire net income, subject to any
46 modification required by paragraphs (d) and (e) of subdivision three of
47 this section, or (4) one hundred twenty-five dollars, whichever is
48 greatest, plus (b) a tax computed at the rate of three-quarters of a
49 mill for each dollar of the portion of its subsidiary capital allocated
50 within the city as provided in this paragraph. In the case of a taxpay-
51 er which is not subject to tax for an entire year, the exemption allowed
52 in clause three of subparagraph (a) of this paragraph shall be prorated
53 according to the period such taxpayer was subject to tax.

54 C. For each taxable year beginning in nineteen hundred seventy-four
55 and ending in nineteen hundred seventy-five, two tentative taxes shall
56 be computed, the first as provided in paragraph A and the second as

1 provided in paragraph B of this subdivision, and the tax for each such
2 year shall be the sum of that proportion of each tentative tax which the
3 number of days in nineteen hundred seventy-four and the number of days
4 in nineteen hundred seventy-five, respectively, bears to the number of
5 days in the entire taxable year.

6 D. For taxable years beginning on or after January first, nineteen
7 hundred seventy-seven and before January first, nineteen hundred seven-
8 ty-eight, the tax imposed by subdivision one of section 11-603 of this
9 subchapter shall be, in the case of each taxpayer: (a) a tax (1)
10 computed at the rate of nine and one-half per centum of its entire net
11 income, or the portion of such entire net income allocated within the
12 city as provided in this paragraph, subject to any modification required
13 by paragraphs (d) and (e) of subdivision three of this section, or (2)
14 computed at one and one-half mills for each dollar of its total business
15 and investment capital, or the portion thereof allocated within the
16 city, as provided in this paragraph, except that in the case of a coop-
17 erative housing corporation as defined in the internal revenue code, the
18 applicable rate shall be four-tenths of one mill, or (3) computed at the
19 rate of nine and one-half per centum on thirty per centum of the taxpay-
20 er's entire net income plus salaries and other compensation paid to the
21 taxpayer's elected or appointed officers and to every stockholder owning
22 in excess of five per centum of its issued capital stock minus fifteen
23 thousand dollars, except as provided in this paragraph, and any net loss
24 for the reported year, or on the portion of any such sum allocated with-
25 in the city as provided in this paragraph for the allocation of entire
26 net income, subject to any modification required by paragraphs (d) and
27 (e) of subdivision three of this section, or (4) one hundred twenty-five
28 dollars, whichever is greatest, plus (b) a tax computed at the rate of
29 three-quarters of a mill for each dollar of the portion of its subsid-
30 iary capital allocated within the city as provided in this paragraph. In
31 the case of a taxpayer which is not subject to tax for an entire year,
32 the exemption allowed in clause three of subparagraph (a) of this para-
33 graph shall be prorated according to the period such taxpayer was
34 subject to tax.

35 E. For taxable years beginning on or after January first, nineteen
36 hundred seventy-eight but before January first, two thousand twenty-sev-
37 en, the tax imposed by subdivision one of section 11-603 of this
38 subchapter shall be, in the case of each taxpayer:

39 (a) whichever of the following amounts is the greatest:

40 (1) an amount computed, for taxable years beginning before nineteen
41 hundred eighty-seven, at the rate of nine per centum, and for taxable
42 years beginning after nineteen hundred eighty-six, at the rate of eight
43 and eighty-five one-hundredths per centum, of its entire net income or
44 the portion of such entire net income allocated within the city as
45 provided in this paragraph, subject to any modification required by
46 paragraphs (d) and (e) of subdivision three of this section,

47 (2) an amount computed at one and one-half mills for each dollar of
48 its total business and investment capital, or the portion thereof allo-
49 cated within the city, as provided in this paragraph, except that in the
50 case of a cooperative housing corporation as defined in the internal
51 revenue code, the applicable rate shall be four-tenths of one mill,

52 (3) an amount computed, for taxable years beginning before nineteen
53 hundred eighty-seven, at the rate of nine per centum, and for taxable
54 years beginning after nineteen hundred eighty-six, at the rate of eight
55 and eighty-five one-hundredths per centum, on thirty per centum of the
56 taxpayer's entire net income plus salaries and other compensation paid

1 to the taxpayer's elected or appointed officers and to every stockholder
 2 owning in excess of five per centum of its issued capital stock minus
 3 fifteen thousand dollars, subject to proration as provided in this para-
 4 graph, and any net loss for the reported year, or on the portion of any
 5 such sum allocated within the city as provided in this paragraph for the
 6 allocation of entire net income, subject to any modification required by
 7 paragraphs (d) and (e) of subdivision three of this section, provided,
 8 however, that for taxable years beginning on or after July first, nine-
 9 teen hundred ninety-six, the provisions of paragraph H of this subdivi-
 10 sion shall apply for purposes of the computation under this clause, or
 11 (4) for taxable years ending on or before June thirtieth, nineteen
 12 hundred eighty-nine, one hundred twenty-five dollars, for taxable years
 13 ending after June thirtieth, nineteen hundred eighty-nine and beginning
 14 before two thousand nine, three hundred dollars, and for taxable years
 15 beginning after two thousand eight:

16 If city	Fixed dollar
17 receipts are:	minimum tax is:
18 Not more than \$100,000	\$25
19 More than \$100,000 but not over \$250,000	\$75
20 More than \$250,000 but not over \$500,000	\$175
21 More than \$500,000 but not over \$1,000,000	\$500
22 More than \$1,000,000 but not over \$5,000,000	\$1,500
23 More than \$5,000,000 but not over \$25,000,000	\$3,500
24 Over \$25,000,000	\$5,000

25 For purposes of this clause, city receipts are the receipts computed in
 26 accordance with subparagraph two of paragraph (a) of subdivision three
 27 of this section for the taxable year. For taxable years beginning after
 28 two thousand eight, if the taxable year is less than twelve months,
 29 the amount prescribed by this clause shall be reduced by twenty-five
 30 percent if the period for which the taxpayer is subject to tax is more
 31 than six months but not more than nine months and by fifty percent if
 32 the period for which the taxpayer is subject to tax is not more than six
 33 months. If the taxable year is less than twelve months, the amount of
 34 city receipts for purposes of this clause is determined by divid-
 35 ing the amount of the receipts for the taxable year by the number of
 36 months in the taxable year and multiplying the result by twelve plus;

37 (b) an amount computed at the rate of three-quarters of a mill for
 38 each dollar of the portion of its subsidiary capital allocated within
 39 the city as provided in this paragraph.

40 In the case of a taxpayer which is not subject to tax for an entire
 41 year, the exemption allowed in clause three of subparagraph (a) of this
 42 paragraph shall be prorated according to the period such taxpayer was
 43 subject to tax. Provided, however, that this paragraph shall not apply
 44 to taxable years beginning after December thirty-first, two thousand
 45 twenty-six. For the taxable years specified in this subparagraph, the
 46 tax imposed by subdivision one of section 11-603 of this subchapter
 47 shall be, in the case of each taxpayer, determined as specified in para-
 48 graph A of this subdivision, provided, however, that the provisions of
 49 paragraphs G and H of this subdivision shall apply for purposes of the
 50 computation under clause three of subparagraph (a) of such paragraph.

51 F. Notwithstanding any other provision of this subdivision to the
 52 contrary, for taxable years beginning after nineteen hundred eighty-sev-
 53 en and before two thousand nine the amount of tax computed on the basis

1 of the taxpayer's total business and investment capital, or the portion
2 thereof allocated within the city, shall in no event exceed three
3 hundred fifty thousand dollars and for taxable years beginning after two
4 thousand eight the amount of tax computed on the basis of the taxpayer's
5 total business and investment capital, or the portion thereof allocated
6 within the city, shall in no event exceed one million dollars.

7 G. In the case of a foreign air carrier described in subparagraph one
8 of paragraph (c-1) of subdivision eight of section 11-602 of this
9 subchapter, there shall be excluded from the computation of the tax
10 under clause three of subparagraph (a) of paragraph E of this subdivi-
11 sion salaries and other compensation described therein which are direct-
12 ly attributable to the generation of income excluded from entire net
13 income for the taxable year pursuant to the provisions of paragraph
14 (c-1) of subdivision eight of section 11-602 of this subchapter.

15 H. For taxable years beginning on or after July first, nineteen
16 hundred ninety-six, the computation under clause three of subparagraph
17 (a) of paragraph E of this subdivision shall be subject to the following
18 modifications:

19 (a) (1) For taxable years beginning on or after July first, nineteen
20 hundred ninety-six but before July first, nineteen hundred ninety-eight,
21 only seventy-five percent of the total salaries and other compensation
22 paid to the taxpayer's elected or appointed officers shall be added to
23 the entire net income entering into such computation; for taxable years
24 beginning on or after July first, nineteen hundred ninety-eight but
25 before July first, nineteen hundred ninety-nine, only fifty percent of
26 such salaries and other compensation shall be added to such entire net
27 income; and for taxable years beginning on or after July first, nineteen
28 hundred ninety-nine, no part of such salaries and other compensation
29 shall be added to such entire net income.

30 (2) Notwithstanding anything in clause one of this subparagraph to the
31 contrary, the full amount of the salary or other compensation paid to
32 any such elected or appointed officer shall be added to entire net
33 income as provided in clause three of subparagraph (a) of paragraph E of
34 this subdivision if such officer was, at any time during the taxable
35 year, a stockholder owning more than five percent of taxpayer's issued
36 capital stock.

37 (b) For taxable years beginning on or after July first, nineteen
38 hundred ninety-seven but before July first, nineteen hundred ninety-
39 eight, the fixed dollar amount entering into the computation under
40 clause three of subparagraph (a) of paragraph E of this subdivision
41 shall be thirty thousand dollars instead of fifteen thousand dollars;
42 and for taxable years beginning on or after July first, nineteen hundred
43 ninety-eight, such fixed dollar amount shall be forty thousand dollars.

44 (c) For taxable years beginning on or after January first, two thou-
45 sand seven and before January first, two thousand eight the per centum
46 entering into the computation under clause three of subparagraph (a) of
47 paragraph E of this subdivision shall be twenty-six and one-fourth per
48 centum instead of thirty per centum, for taxable years beginning on or
49 after January first, two thousand eight and before January first, two
50 thousand nine such per centum shall be twenty-two and one-half per
51 centum, for taxable years beginning on or after January first, two thou-
52 sand nine and before January first, two thousand ten such per centum
53 shall be eighteen and three-fourths per centum and for taxable years
54 beginning on or after January first, two thousand ten such per centum
55 shall be fifteen per centum.

1 I. Notwithstanding any provision of this subdivision to the contrary,
2 for taxable years beginning on or after January first, two thousand
3 seven for any corporation that:

4 (a) has a business allocation percentage for the taxable year, as
5 determined under paragraph (a) of subdivision three of this section, of
6 one hundred percent;

7 (b) has no investment capital or income at any time during the taxable
8 year;

9 (c) has no subsidiary capital or income at any time during the taxable
10 year; and

11 (d) has gross income, as defined in section sixty-one of the internal
12 revenue code, less than two hundred fifty thousand dollars for the taxa-
13 ble year:

14 the tax imposed by subdivision one of section 11-603 of this subchap-
15 ter shall be the greater of the tax on entire net income computed under
16 clause one of subparagraph (a) of paragraph E of this subdivision and
17 the fixed dollar minimum tax specified in clause four of subparagraph
18 (a) of paragraph E of this subdivision.

19 For purposes of this paragraph, for taxable years beginning before
20 January first, two thousand fifteen, any corporation for which an
21 election under subsection (a) of section six hundred sixty of the tax
22 law is not in effect for the taxable year may elect to treat as entire
23 net income the sum of:

24 (i) entire net income as determined under section two hundred eight of
25 the tax law; and

26 (ii) any deductions taken for the taxable year in computing federal
27 taxable income for Staten Island city taxes paid or accrued under this
28 chapter.

29 2. The amount of subsidiary capital, investment capital and business
30 capital shall each be determined by taking the average value of the
31 gross assets included therein, less liabilities deductible therefrom
32 pursuant to the provisions of subdivisions three, four and six of
33 section 11-602 of this subchapter, and, if the period covered by the
34 report is other than a period of twelve calendar months, by multiplying
35 such value by the number of calendar months or major parts thereof
36 included in such period, and dividing the product thus obtained by
37 twelve. For purposes of this subdivision, real property and marketable
38 securities shall be valued at fair market value and the value of
39 personal property other than marketable securities shall be the value
40 thereof shown on the books and records of the taxpayer in accordance
41 with generally accepted accounting principles.

42 3. The portion of the entire net income of a taxpayer to be allocated
43 within the city shall be determined as follows:

44 (a) multiply its business income by a business allocation percentage
45 to be determined by:

46 (1) ascertaining the percentage which the average value of the taxpay-
47 er's real and tangible personal property, whether owned or rented to it,
48 within the city during the period covered by its report bears to the
49 average value of all the taxpayer's real and tangible personal property,
50 whether owned or rented to it, wherever situated during such period. For
51 the purpose of this subparagraph, the term "value of the taxpayer's real
52 and tangible personal property" shall mean the adjusted bases of such
53 properties for federal income tax purposes, except that in the case of
54 rented property such value shall mean the product of (A) eight and (B)
55 the gross rents payable for the rental of such property during the taxa-
56 ble year; provided, however, that the taxpayer may make a one-time,

1 revocable election, pursuant to regulations promulgated by the commis-
2 sioner of finance to use fair market value as the value of all of its
3 real and tangible personal property, provided that such election is made
4 on or before the due date for filing a report under section 11-605 of
5 this subchapter for the taxpayer's first taxable year commencing on or
6 after January first, nineteen hundred eighty-eight and provided that
7 such election shall not apply to any taxable year with respect to which
8 the taxpayer is included on a combined report unless each of the taxpay-
9 ers included on such report has made such an election which remains in
10 effect for such year;

11 (2) ascertaining the percentage which the receipts of the taxpayer,
12 computed on the cash or accrual basis according to the method of
13 accounting used in the computation of its entire net income, arising
14 during such period from:

15 (A) except as otherwise provided in subparagraph nine of this para-
16 graph, sales of its tangible personal property where shipments are made
17 to points within the city;

18 (B) services performed within the city, provided, however, that (i) in
19 the case of a taxpayer engaged in the business of publishing newspapers
20 or periodicals, receipts arising from sales of advertising contained in
21 such newspapers and periodicals shall be deemed to arise from services
22 performed within the city to the extent that such newspapers and period-
23 icals are delivered to points within the city, (ii) receipts received
24 from an investment company arising from the sale of management, adminis-
25 tration or distribution services to such investment company shall be
26 deemed to arise from services performed within the city to the extent
27 set forth in subparagraph five of this paragraph, (iii) in the case of
28 taxpayers principally engaged in the activity of air freight forwarding
29 acting as principal and like indirect air carriage, receipts arising
30 from such activity shall be deemed to arise from services performed
31 within the city as follows: one hundred percent of such receipts if both
32 the pickup and delivery associated with such receipts are made in the
33 city and fifty percent of such receipts if either the pickup or delivery
34 associated with such receipts is made in the city, (iv) for taxable
35 years beginning on or after January first, two thousand two, in the case
36 of a taxpayer engaged in the business of publishing newspapers or peri-
37 odicals, or broadcasting radio or television programs, whether through
38 the public airwaves or by cable, direct or indirect satellite trans-
39 mission, or any other means of transmission, receipts arising from sales
40 of subscriptions, advertising or broadcasting shall be deemed to arise
41 from services performed within the city to the extent provided in
42 subparagraph nine of this paragraph, and (v) for taxable years beginning
43 after two thousand eight, in the case of a taxpayer which is a regis-
44 tered securities or commodities broker or dealer, the receipts specified
45 in subparagraph ten of this paragraph shall be deemed to arise from
46 services performed within the city to the extent set forth in such
47 subparagraph ten;

48 (C) rentals from property situated and royalties from the use of
49 patents or copyrights, within the city;

50 (D) all other business receipts earned within the city, bear to the
51 total amount of the taxpayer's receipts, similarly computed, arising
52 during such period from all sales of its tangible personal property,
53 services, rentals, royalties and all other business transactions, wheth-
54 er within or without the city; and

55 (E) notwithstanding any other provision of this paragraph, net global
56 intangible low-taxed income shall be included in the receipts fraction

1 as provided in this clause. Receipts constituting net global intangible
2 low-taxed income shall not be included in the numerator of the receipts
3 fraction. Receipts constituting net global intangible low-taxed income
4 shall be included in the denominator of the receipts fraction. For
5 purposes of this clause, the term "net global intangible low-taxed
6 income" means the amount that would have been required to be included in
7 the taxpayer's federal gross income pursuant to subsection (a) of
8 section nine hundred fifty-one-A of the internal revenue code less the
9 amount of the deduction that would have been allowed under clause (i) of
10 subparagraph (B) of paragraph one of subdivision (a) of section two
11 hundred fifty of such code if the taxpayer had not made an election
12 under subchapter s of chapter one of the internal revenue code;

13 (3) ascertaining the percentage of the total wages, salaries and other
14 personal service compensation, similarly computed, during such period of
15 employees within the city, except general executive officers, to the
16 total wages, salaries and other personal service compensation, similarly
17 computed, during such period of all the taxpayer's employees within and
18 without the city, except general executive officers; and

19 (4) adding together the percentages so determined and dividing the
20 result by the number of percentages; provided, however, that for taxable
21 years beginning on or after July first, nineteen hundred ninety-six, a
22 taxpayer that is a "manufacturing corporation," as defined in subpara-
23 graph eight of this paragraph, may determine its business allocation
24 percentage as provided in such subparagraph eight; and provided,
25 further, however, that for taxable years beginning before July first,
26 nineteen hundred ninety-six, if the taxpayer does not have a regular
27 place of business outside the city other than a statutory office, the
28 business allocation percentage shall be one hundred per centum.

29 (5) Rules for receipts from certain services to investment companies.
30 (A) For purposes of subclause (ii) of clause (B) of subparagraph two of
31 this paragraph, the portion of receipts received from an investment
32 company arising from the sale of management, administration or distrib-
33 ution services to such investment company determined in accordance with
34 clause (B) of this subparagraph shall be deemed to arise from services
35 performed within the city, such portion referred to as the Staten Island
36 city portion.

37 (B) The Staten Island city portion shall be the product of (a) the
38 total of such receipts from the sale of such services and (b) a frac-
39 tion. The numerator of that fraction is the sum of the monthly percent-
40 ages, as defined, determined for each month of the investment company's
41 taxable year for federal income tax purposes which taxable year ends
42 within the taxable year of the taxpayer, but excluding any month during
43 which the investment company had no outstanding shares. The monthly
44 percentage for each such month is determined by dividing (a) the number
45 of shares in the investment company which are owned on the last day of
46 the month by shareholders which are domiciled in the city by (b) the
47 total number of shares in the investment company outstanding on that
48 date. The denominator of the fraction is the number of such monthly
49 percentages.

50 (C) (i) For purposes of this subparagraph, the term "domicile", in the
51 case of an individual, shall have the meaning ascribed to it under chap-
52 ter seventeen of this title; an estate or trust is domiciled in the city
53 if it is a city resident estate or trust as defined in paragraph three
54 of subdivision (b) of section 11-1705 of the code of the preceding muni-
55 cipality; a business entity is domiciled in the city if the location of
56 the actual seat of management or control is in the city. It shall be

1 presumed that the domicile of a shareholder, with respect to any month,
2 is his, her or its mailing address on the records of the investment
3 company as of the last day of such month.

4 (ii) For purposes of this subparagraph, the term "investment company"
5 means a regulated investment company, as defined in section eight
6 hundred fifty-one of the internal revenue code, and a partnership to
7 which subdivision (a) of section seven thousand seven hundred four of
8 the internal revenue code applies, by virtue of paragraph three of
9 subdivision (c) of section seven thousand seven hundred four of such
10 code, and that meets the requirements of subdivision (b) of section
11 eight hundred fifty-one of such code. The provisions of this subpara-
12 graph shall be applied to the taxable year for federal income tax
13 purposes of the business entity that is asserted to constitute an
14 investment company that ends within the taxable year of the taxpayer.

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

19 (iv) For purposes of this subparagraph, the term "management services"
20 means the rendering of investment advice to an investment company,
21 making determinations as to when sales and purchases of securities are
22 to be made on behalf of an investment company, or the selling or
23 purchasing of securities constituting assets of an investment company,
24 and related activities, but only where such activity or activities are
25 performed pursuant to a contract with the investment company entered
26 into pursuant to subdivision (a) of section fifteen of the federal
27 investment company act of nineteen hundred forty, as amended.

28 (v) For purposes of this subparagraph, the term "distribution
29 services" means the services of advertising, servicing investor
30 accounts, including redemptions, marketing shares or selling shares of
31 an investment company, but, in the case of advertising, servicing inves-
32 tor accounts, including redemptions, or marketing shares, only where
33 such service is performed by a person who is, or was, in the case of a
34 closed end company, also engaged in the service of selling such shares.
35 In the case of an open end company, such service of selling shares must
36 be performed pursuant to a contract entered into pursuant to subdivision
37 (b) of section fifteen of the federal investment company act of nineteen
38 hundred forty, as amended.

39 (vi) For purposes of this subparagraph, the term "administration
40 services" includes (1) clerical, accounting, bookkeeping, data process-
41 ing, internal auditing, legal and tax services performed for an invest-
42 ment company but only (2) if the provider of such service or services
43 during the taxable year in which such service or services are sold also
44 sells management or distribution services, as defined in this paragraph,
45 to such investment company.

46 (6) (A) Provided, further, however, that a taxpayer principally
47 engaged in the conduct of aviation, other than as provided in clause (C)
48 of this subparagraph, shall, notwithstanding subparagraphs one through
49 five of this paragraph, determine the portion of entire net income to be
50 allocated within the city by multiplying its business income by a busi-
51 ness allocation percentage which is equal to the arithmetic average of
52 the following three percentages:

53 (i) the percentage determined by dividing aircraft arrivals and depar-
54 tures within the city by the taxpayer during the period covered by its
55 report by the total aircraft arrivals and departures within and without
56 the city during such period; provided, however, arrivals and departures

1 solely for maintenance or repair, refueling, where no debarkation or
2 embarkation of traffic occurs, arrivals and departures of ferry and
3 personnel training flights or arrivals and departures in the event of
4 emergency situations shall not be included in computing such arrival and
5 departure percentage; provided, further, the commissioner of finance may
6 also exempt from such percentage aircraft arrivals and departures of all
7 non-revenue flights including flights involving the transportation of
8 officers or employees receiving air transportation to perform mainte-
9 nance or repair services or where such officers or employees are trans-
10 ported in conjunction with an emergency situation or the investigation
11 of an air disaster, other than on a scheduled flight; provided, however,
12 that arrivals and departures of flights transporting officers and
13 employees receiving air transportation for purposes other than specified
14 above, without regard to remuneration, shall be included in computing
15 such arrival and departure percentage;

16 (ii) the percentage determined by dividing the revenue tons handled by
17 the taxpayer at airports within the city during such period by the total
18 revenue tons handled by it at airports within and without the city
19 during such period; and

20 (iii) the percentage determined by dividing the taxpayer's originating
21 revenue within the city for such period by its total originating revenue
22 within and without the city for such period.

23 (B) As used herein, the term "aircraft arrivals and departures" means
24 the number of landings and takeoffs of the aircraft of the taxpayer and
25 the number of air pickups and deliveries by the aircraft of such taxpay-
26 er; the term "originating revenue" means revenue to the taxpayer from
27 the transportation of revenue passengers and revenue property first
28 received by the taxpayer either as originating or connecting traffic at
29 airports; and the term "revenue tons handled" by the taxpayer at
30 airports means the weight in tons of revenue passengers, at two hundred
31 pounds per passenger, and revenue cargo first received either as origi-
32 nating or connecting traffic or finally discharged by the taxpayer at
33 airports;

34 (C) A foreign air carrier described in subparagraph one of paragraph
35 (c-1) of subdivision eight of section 11-602 of this subchapter shall
36 determine its business allocation percentage pursuant to the provisions
37 of subparagraphs one through four of this paragraph, except that the
38 numerators and denominators involved in such computation shall exclude
39 property to the extent employed in generating income excluded from
40 entire net income pursuant to the provisions of paragraph (c-1) of
41 subdivision eight of section 11-602 of this subchapter, exclude such
42 receipts as are excluded from entire net income for the taxable year
43 pursuant to the provisions of paragraph (c-1) of subdivision eight of
44 section 11-602 of this subchapter, and exclude wages, salaries or other
45 personal service compensation which are directly attributable to the
46 generation of income excluded from entire net income for the taxable
47 year pursuant to the provisions of paragraph (c-1) of subdivision eight
48 of section 11-602 of this subchapter.

49 (7) Provided, further, however, that a taxpayer principally engaged in
50 the operation of vessels shall, notwithstanding subparagraphs one
51 through six of this paragraph, determine the portion of entire net
52 income to be allocated within the city by multiplying its business
53 income by a business allocation percentage determined by dividing the
54 aggregate number of working days of the vessels it owns or leases in
55 territorial waters of the city during the period covered by its report

1 by the aggregate number of working days of all the vessels it owns or
2 leases during such period.

3 (8) (A) For taxable years beginning on or after July first, nineteen
4 hundred ninety-six and before January first, two thousand eleven, a
5 manufacturing corporation may elect to determine its business allocation
6 percentage by adding together the percentages determined under subpara-
7 graphs one, two and three of this paragraph and an additional percentage
8 equal to the percentage determined under subparagraph two of this para-
9 graph, and dividing the result by the number of percentages so added
10 together.

11 (B) An election under this subparagraph must be made on a timely
12 filed, determined with regard to extensions granted, original report for
13 the taxable year. Once made for a taxable year, such election shall be
14 irrevocable for that taxable year. A separate election must be made for
15 each taxable year. A manufacturing corporation that has failed to make
16 an election as provided in this clause shall be required to determine
17 its business allocation percentage without regard to the provisions of
18 this subparagraph. Notwithstanding anything in this clause to the
19 contrary, the commissioner of finance may permit a manufacturing corpo-
20 ration to make or revoke an election under this subparagraph, upon such
21 terms and conditions as the commissioner may prescribe, where the
22 commissioner determines that such permission should be granted in the
23 interests of fairness and equity due to a change in circumstances
24 resulting from an audit adjustment.

25 (C) As used in this subparagraph, the term "manufacturing corporation"
26 means a corporation primarily engaged in the manufacturing and sale
27 thereof of tangible personal property; and the term "manufacturing"
28 includes the process, including the assembly process, (i) of working raw
29 materials into wares suitable for use or (ii) which gives new shapes,
30 new qualities or new combinations to matter which already has gone
31 through some artificial process, by the use of machinery, tools, appli-
32 ances and other similar equipment. A corporation shall be deemed to be
33 primarily engaged in the activities described in the provisions of this
34 subparagraph if more than fifty percent of its gross receipts for the
35 taxable year are attributable to such activities.

36 (D) Notwithstanding anything to the contrary, if a taxpayer that is
37 otherwise eligible to make the election authorized by this subparagraph
38 is required or permitted to make a report on a combined basis with one
39 or more other corporations pursuant to subdivision four of section
40 11-605 of this chapter, the taxpayer shall be permitted to make an
41 election under this subparagraph only if such taxpayer and such other
42 corporation or corporations would be a manufacturing corporation if they
43 were treated as a single corporation. In making such determination,
44 intercorporate transactions shall be eliminated. Where such election has
45 been made by the taxpayer for a taxable year, each of the other corpo-
46 rations included in the combined report shall also be deemed to have
47 made a proper election under this subparagraph for such taxable year.

48 (9) Special rules for publishers and broadcasters. (A) Notwithstanding
49 anything in subparagraph two of this paragraph to the contrary and
50 except as provided in clause (C) of this subparagraph, in the case of a
51 taxpayer engaged in the business of publishing newspapers or period-
52 icals, there shall be allocated to the city, for purposes of subpara-
53 graph two of this paragraph, the gross sales or charges for services
54 arising from sales of advertising contained in such newspapers or peri-
55 odicals, to the extent that such newspapers or periodicals are delivered
56 to points within the city.

1 (B) Notwithstanding anything in subparagraph two of this paragraph to
2 the contrary and except as provided in clause (C) of this subparagraph,
3 in the case of a taxpayer engaged in the business of broadcasting radio
4 or television programs, whether through the public airwaves or by cable,
5 direct or indirect satellite transmission, or any other means of trans-
6 mission, there shall be allocated to the city, for purposes of subpara-
7 graph two of this paragraph, a portion of the gross sales or charges for
8 services arising from the broadcasting of such programs and of commer-
9 cial messages in connection therewith, such portion to be determined
10 according to the number of listeners or viewers within and without the
11 city.

12 (C) Notwithstanding anything in clause (A) or (B) of this subparagraph
13 to the contrary, in the case of a taxpayer engaged in the business of
14 publishing newspapers or periodicals, or broadcasting radio or tele-
15 vision programs, whether through the public airwaves or by cable, direct
16 or indirect satellite transmission, or any other means of transmission,
17 there shall be allocated to the city, for purposes of subparagraph two
18 of this paragraph, the gross sales or charges to subscribers located in
19 the city for subscriptions to such newspapers, periodicals, or program
20 services. For purposes of this clause, a subscriber shall be deemed
21 located in the city if, in the case of newspapers and periodicals, the
22 mailing address for the subscription is within the city and, in the case
23 of program services, the billing address for the subscription is within
24 the city. For purposes of this clause, "subscriber" shall mean a member
25 of the general public who receives such newspapers, periodicals or
26 program services and does not further distribute them.

27 (10) Notwithstanding subparagraphs one through five of this paragraph,
28 but subject to subparagraph eight of this paragraph, the business allo-
29 cation percentage, to the extent that it is computed by reference to the
30 percentages determined under subparagraphs one, two and three of this
31 paragraph, shall be computed in the manner set forth in this subpara-
32 graph.

33 (A) For taxable years beginning in two thousand nine, the business
34 allocation percentage shall be determined by adding together the follow-
35 ing percentages:

36 (i) the product of thirty percent and the percentage determined under
37 subparagraph one of this paragraph,

38 (ii) the product of forty percent and the percentage determined under
39 subparagraph two of this paragraph, and

40 (iii) the product of thirty percent and the percentage determined
41 under subparagraph three of this paragraph.

42 (B) For taxable years beginning in two thousand ten, the business
43 allocation percentage shall be determined by adding together the follow-
44 ing percentages:

45 (i) the product of twenty-seven percent and the percentage determined
46 under subparagraph one of this paragraph,

47 (ii) the product of forty-six percent and the percentage determined
48 under subparagraph two of this paragraph, and

49 (iii) the product of twenty-seven percent and the percentage deter-
50 mined under subparagraph three of this paragraph.

51 (C) For taxable years beginning in two thousand eleven, the business
52 allocation percentage shall be determined by adding together the follow-
53 ing percentages:

54 (i) the product of twenty-three and one-half percent and the percent-
55 age determined under subparagraph one of this paragraph,

1 (ii) the product of fifty-three percent and the percentage determined
2 under subparagraph two of this paragraph, and

3 (iii) the product of twenty-three and one-half percent and the
4 percentage determined under subparagraph three of this paragraph.

5 (D) For taxable years beginning in two thousand twelve, the business
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (i) the product of twenty percent and the percentage determined under
9 subparagraph one of this paragraph,

10 (ii) the product of sixty percent and the percentage determined under
11 subparagraph two of this paragraph, and

12 (iii) the product of twenty percent and the percentage determined
13 under subparagraph three of this paragraph.

14 (E) For taxable years beginning in two thousand thirteen, the business
15 allocation percentage shall be determined by adding together the follow-
16 ing percentages:

17 (i) the product of sixteen and one-half percent and the percentage
18 determined under subparagraph one of this paragraph,

19 (ii) the product of sixty-seven percent and the percentage determined
20 under subparagraph two of this paragraph, and

21 (iii) the product of sixteen and one-half percent and the percentage
22 determined under subparagraph three of this paragraph.

23 (F) For taxable years beginning in two thousand fourteen, the business
24 allocation percentage shall be determined by adding together the follow-
25 ing percentages:

26 (i) the product of thirteen and one-half percent and the percentage
27 determined under subparagraph one of this paragraph,

28 (ii) the product of seventy-three percent and the percentage deter-
29 mined under subparagraph two of this paragraph, and

30 (iii) the product of thirteen and one-half percent and the percentage
31 determined under subparagraph three of this paragraph.

32 (G) For taxable years beginning in two thousand fifteen, the business
33 allocation percentage shall be determined by adding together the follow-
34 ing percentages:

35 (i) the product of ten percent and the percentage determined under
36 subparagraph one of this paragraph,

37 (ii) the product of eighty percent and the percentage determined under
38 subparagraph two of this paragraph, and

39 (iii) the product of ten percent and the percentage determined under
40 subparagraph three of this paragraph.

41 (H) For taxable years beginning in two thousand sixteen, the business
42 allocation percentage shall be determined by adding together the follow-
43 ing percentages:

44 (i) the product of six and one-half percent and the percentage deter-
45 mined under subparagraph one of this paragraph,

46 (ii) the product of eighty-seven percent and the percentage determined
47 under subparagraph two of this paragraph, and

48 (iii) the product of six and one-half percent and the percentage
49 determined under subparagraph three of this paragraph.

50 (I) For taxable years beginning in two thousand seventeen, the busi-
51 ness allocation percentage shall be determined by adding together the
52 following percentages:

53 (i) the product of three and one-half percent and the percentage
54 determined under subparagraph one of this paragraph,

55 (ii) the product of ninety-three percent and the percentage determined
56 under subparagraph two of this paragraph, and

1 (iii) the product of three and one-half percent and the percentage
2 determined under subparagraph three of this paragraph.

3 (J) For taxable years beginning after two thousand seventeen, the
4 business allocation percentage shall be the percentage determined under
5 subparagraph two of this paragraph.

6 (K) The commissioner shall promulgate rules necessary to implement the
7 provisions of this subparagraph under such circumstances where any of
8 the percentages to be determined under subparagraph one, two or three of
9 this paragraph cannot be determined because the taxpayer has no proper-
10 ty, receipts or wages within or without the city.

11 (11) (A) In the case of a taxpayer which is a registered securities or
12 commodities broker or dealer, the receipts specified in items (i)
13 through (vii) of this clause shall be deemed to arise from services
14 performed within the city to the extent set forth in each of such items.

15 (i) Receipts constituting brokerage commissions derived from the
16 execution of securities or commodities purchase or sales orders for the
17 accounts of customers shall be deemed to arise from services performed
18 at the mailing address in the records of the taxpayer of the customer
19 who is responsible for paying such commissions.

20 (ii) Receipts constituting margin interest earned on behalf of broker-
21 age accounts shall be deemed to arise from services performed at the
22 mailing address in the records of the taxpayer of the customer who is
23 responsible for paying such margin interest.

24 (iii) Gross income, including any accrued interest or dividends, from
25 principal transactions for the purchase or sale of stocks, bonds,
26 foreign exchange and other securities or commodities, including futures
27 and forward contracts, options and other types of securities or commod-
28 ities derivatives contracts, shall be deemed to arise from services
29 performed within the city either (I) to the extent that production cred-
30 its are awarded to branches, offices or employees of the taxpayer within
31 the city as a result of such principal transactions or (II) if the
32 taxpayer so elects, to the extent that the gross proceeds from such
33 principal transactions, determined without deduction for any cost
34 incurred by the taxpayer to acquire the securities or commodities, are
35 generated from sales of securities or commodities to customers within
36 the city based upon the mailing addresses of such customers in the
37 records of the taxpayer. For purposes of subitem (II) of this item, the
38 taxpayer shall separately calculate such gross income from principal
39 transactions by type of security or commodity. For purposes of this
40 item, gross income from principal transactions shall be determined after
41 the deduction of any cost incurred by the taxpayer to acquire the secu-
42 rities or commodities. For purposes of this subparagraph, the term
43 "production credits" means credits granted pursuant to the internal
44 accounting system used by the taxpayer to measure the amount of revenue
45 that should be awarded to a particular branch or office or employee of
46 the taxpayer which is based, at least in part, on the branch's, the
47 office's or the employee's particular activities. Upon request, the
48 taxpayer shall be required to furnish a detailed explanation of such
49 internal accounting system to the department.

50 (iv) (I) Receipts constituting fees earned by the taxpayer for advi-
51 sory services to a customer in connection with the underwriting of secu-
52 rities for such customer, such customer being the entity which is
53 contemplating issuing or is issuing securities, or fees earned by the
54 taxpayer for managing an underwriting shall be deemed to arise from
55 services performed at the mailing address in the records of the taxpayer
56 of such customer who is responsible for paying such fees.

1 (II) Receipts constituting the primary spread or selling concession
2 from underwritten securities shall be deemed to arise from services
3 performed within the city to the extent that production credits are
4 awarded to branches, offices or employees of the taxpayer within the
5 city as a result of the sale of the underwritten securities.

6 (III) The term "primary spread" means the difference between the price
7 paid by the taxpayer to the issuer of the securities being marketed and
8 the price received from the subsequent sale of the underwritten securi-
9 ties at the initial public offering price, less any selling concession
10 and any fees paid to the taxpayer for advisory services or any manager's
11 fees, if such fees are not paid by the customer to the taxpayer sepa-
12 rately. The term "public offering price" means the price agreed upon by
13 the taxpayer and the issuer at which the securities are to be offered to
14 the public. The term "selling concession" means the amount paid to the
15 taxpayer for participating in the underwriting of a security where the
16 taxpayer is not the lead underwriter.

17 (v) Receipts constituting interest earned by the taxpayer on loans and
18 advances made by the taxpayer to a corporation affiliated with the
19 taxpayer but with which the taxpayer is not permitted or required to
20 file a combined report pursuant to subdivision four of section 11-605 of
21 this subchapter shall be deemed to arise from services performed at the
22 principal place of business of such affiliated corporation.

23 (vi) Receipts constituting account maintenance fees shall be deemed to
24 arise from services performed at the mailing address in the records of
25 the taxpayer of the customer who is responsible for paying such account
26 maintenance fees.

27 (vii) Receipts constituting fees for management or advisory services,
28 including fees for advisory services in relation to merger or acquisi-
29 tion activities but excluding fees paid for services described in item
30 (ii) of clause (B) of subparagraph two of this paragraph, shall be
31 deemed to arise from services performed at the mailing address in the
32 records of the taxpayer of the customer who is responsible for paying
33 such fees.

34 (B) For purposes of this subparagraph, the term "securities" shall
35 have the same meaning as in paragraph two of subdivision (c) of section
36 four hundred seventy-five of the internal revenue code and the term
37 "commodities" shall have the same meaning as in paragraph two of subdivi-
38 sion (e) of section four hundred seventy-five of the internal revenue
39 code. The term "registered securities or commodities broker or dealer"
40 means a broker or dealer registered as such by the securities and
41 exchange commission or the commodities futures trading commission, and
42 shall include an over-the-counter derivatives dealer as defined under
43 regulations of the securities and exchange commission at title 17, part
44 240, section 3b-12 of the code of federal regulations (17 CFR
45 240.3b-12).

46 (C) If the taxpayer receives any of the receipts enumerated in clause
47 (A) of this subparagraph as a result of a securities correspondent
48 relationship such taxpayer has with another registered securities or
49 commodities broker or dealer with the taxpayer acting in this relation-
50 ship as the clearing firm, such receipts shall be deemed to arise from
51 services performed within the city to the extent set forth in each of
52 the items of clause (A) of this subparagraph. The amount of such
53 receipts shall exclude the amount the taxpayer is required to pay to the
54 correspondent firm for such correspondent relationship. If the taxpayer
55 receives any of the receipts enumerated in clause (A) of this subpara-
56 graph as a result of a securities correspondent relationship such

1 taxpayer has with another registered securities or commodities broker or
2 dealer with the taxpayer acting in this relationship as the introducing
3 firm, such receipts shall be deemed to arise from services performed
4 within the city to the extent set forth in each of the items of clause
5 (A) of this subparagraph.

6 (D) If, for purposes of item (i) or (ii), subitem (I) of item (iv), or
7 item (vi), or (vii) of clause (A) of this subparagraph, the taxpayer is
8 unable from its records to determine the mailing address of the custom-
9 er, the receipts enumerated in any of such items shall be deemed to
10 arise from services performed at the branch or office of the taxpayer
11 that generates the transaction for the customer that generated such
12 receipts.

13 (b) multiply its investment income by an investment allocation
14 percentage to be determined by:

15 (1) multiplying the amount of its investment capital invested in each
16 stock, bond or other security, other than governmental securities,
17 during the period covered by its report by the issuer's allocation
18 percentage of the issuer or obligor thereof.

19 (i) In the case of an issuer or obligor subject to tax under this
20 subchapter, subchapter three-A or subchapter four of this chapter, or
21 subject to tax as a utility corporation under chapter eleven of this
22 title, the issuer's allocation percentage shall be the percentage of the
23 appropriate measure, which is required to be allocated within the city
24 on the report or reports, if any, required of the issuer or obligor
25 under this title for the preceding year. The "appropriate measure" shall
26 be defined as: in the case of an issuer or obligor subject to this
27 subchapter or subchapter three-A, entire capital; in the case of an
28 issuer or obligor subject to subchapter four of this chapter, issued
29 capital stock; in the case of an issuer or obligor subject to chapter
30 eleven of this title as a utility corporation, gross income.

31 (ii) In the case of an issuer or obligor subject to tax under part
32 four of subchapter three of this chapter, the issuer's allocation
33 percentage shall be determined as follows:

34 (A) In the case of a banking corporation described in paragraphs one
35 through eight of subdivision (a) of section 11-640 of this chapter which
36 is organized under the laws of the United States, this state or any
37 other state of the United States, the issuer's allocation percentage
38 shall be its alternative entire net income allocation percentage, as
39 defined in subdivision (c) of section 11-642 of this chapter, for the
40 preceding year. In the case of such a banking corporation whose alterna-
41 tive entire net income for the preceding year is derived exclusively
42 from business carried on within the city, its issuer's allocation
43 percentage shall be one hundred percent.

44 (B) In the case of a banking corporation described in paragraph two of
45 subdivision (a) of section 11-640 of this chapter which is organized
46 under the laws of a country other than the United States, the issuer's
47 allocation percentage shall be determined by dividing (I) the amount
48 described in clause (i) of subparagraph (A) of paragraph two of subdivi-
49 sion (a) of section 11-642 of this chapter with respect to such issuer
50 or obligor for the preceding year, by (II) the gross income of such
51 issuer or obligor from all sources within and without the United States,
52 for such preceding year, whether or not included in alternative entire
53 net income for such year.

54 (C) In the case of an issuer or obligor described in paragraph nine of
55 subdivision (a) or in paragraph two of subdivision (d) of section 11-640
56 of this chapter, the issuer's allocation percentage shall be determined

1 by dividing the portion of the entire capital of the issuer or obligor
2 allocable to the city for the preceding year by the entire capital,
3 wherever located, of the issuer or obligor for the preceding year.

4 (iii) Provided, however, that if a report or reports for the preceding
5 year are not filed, or if filed do not contain information which would
6 permit the determination of such issuer's allocation percentage, then
7 the issuer's allocation percentage to be used shall, at the discretion
8 of the commissioner of finance, be either (A) the issuer's allocation
9 percentage derived from the most recently filed report or reports of the
10 issuer or obligor or (B) a percentage calculated, by the commissioner of
11 finance, reasonably to indicate the degree of economic presence in the
12 city of the issuer or obligor during the preceding year.

13 (2) adding together the sum so obtained, and

14 (3) dividing the result so obtained by the total of its investment
15 capital invested during such period in stocks, bonds and other securi-
16 ties; provided, however, that in case any investment capital is invested
17 in any stock, bond or other security during only a portion of the period
18 covered by the report, only such portion of such capital shall be taken
19 into account; and provided further, that if a taxpayer's investment
20 allocation percentage is zero, interest received on bank accounts shall
21 be multiplied by its business allocation percentage; and

22 (c) add the products so obtained.

23 (d) Except as provided in subparagraph three of this paragraph or in
24 paragraph (e) of this subdivision, at the election of the taxpayer there
25 shall be deducted from the portion of its entire net income allocated
26 within the city either or both of the items set forth in subparagraphs
27 one and two of this paragraph, except that only one of such deductions
28 shall be allowed with respect to any one item of property.

29 (1) Depreciation with respect to any property such as described in
30 subparagraph three of this paragraph, not exceeding twice the depreci-
31 ation allowed with respect to the same property for federal income tax
32 purposes. Such deduction shall be allowed only upon condition that
33 entire net income be computed without any deduction for the depreciation
34 of the same property, and the total of all deductions allowed in any
35 taxable year or years with respect to the depreciation of any such prop-
36 erty shall not exceed its cost or other basis.

37 (2) Expenditures paid or incurred during the taxable year for the
38 construction, reconstruction, erection or acquisition of any property
39 such as described in subparagraph three of this paragraph which is used
40 or to be used for purposes of research and development in the exper-
41 imental or laboratory sense. Such purposes shall not be deemed to
42 include the ordinary testing or inspection of materials or products for
43 quality control, efficiency surveys, management studies, consumer
44 surveys, advertising, promotions or research in connection with liter-
45 ary, historical or similar projects. Such deduction shall be allowed
46 only on condition that entire net income for the taxable year and all
47 succeeding taxable years be computed without the deduction of any such
48 expenditures and without any deduction for depreciation of the same
49 property, except to the extent that its basis may be attributable to
50 factors other than such expenditures, or in case a deduction is allow-
51 able pursuant to this subparagraph for only a part of such expenditures,
52 on condition that any deduction allowed for federal income tax purposes
53 on account of such expenditures or on account of depreciation of the
54 same property be proportionately reduced in computing entire net income
55 for the taxable year and all succeeding taxable years. With respect to
56 property which is used or to be used for research and development only

1 in part, or during only part of its useful life, a proportionate part of
2 such expenditures shall be deductible. If all or part of such expendi-
3 tures with respect to any property shall have been deducted as provided
4 in this subparagraph, and such property is used for purposes other than
5 research and development to a greater extent than originally reported,
6 the taxpayer shall report such use in its report for the first taxable
7 year during which it occurs, and the commissioner of finance may recom-
8 pute the tax for the year or years for which such deduction was allowed,
9 and may assess any additional tax resulting from such recomputation
10 regardless of the time limitations set forth in section 11-674 of this
11 chapter.

12 (3) Such deductions shall be allowed only with respect to tangible
13 property which is depreciable pursuant to section one hundred sixty-sev-
14 en of the internal revenue code, having a situs in the city and used in
15 the taxpayer's trade or business, (A) constructed, reconstructed or
16 erected after December thirty-first, nineteen hundred sixty-five, pursu-
17 ant to a contract which was, on or before December thirty-first, nine-
18 teen hundred sixty-seven, and at all times thereafter, binding on the
19 taxpayer or, property, the physical construction, reconstruction or
20 erection of which began on or before December thirty-first, nineteen
21 hundred sixty-seven or which began after such date pursuant to an order
22 placed on or before December thirty-first, nineteen hundred sixty-seven,
23 and then only with respect to that portion of the basis thereof or the
24 expenditures relating thereto which is properly attributable to such
25 construction, reconstruction or erection after December thirty-first,
26 nineteen hundred sixty-five, or (B) acquired after December thirty-
27 first, nineteen hundred sixty-five, pursuant to a contract which was, on
28 or before December thirty-first, nineteen hundred sixty-seven, and at
29 all times thereafter, binding on the taxpayer or pursuant to an order
30 placed on or before December thirty-first, nineteen hundred sixty-seven,
31 by purchase as defined in section one hundred seventy-nine (d) of the
32 internal revenue code, if the original use of such property commenced
33 with the taxpayer, commenced in the city and commenced after December
34 thirty-first, nineteen hundred sixty-five, or (C) acquired, constructed,
35 reconstructed, or erected subsequent to December thirty-first nineteen
36 hundred sixty-seven, if such acquisition, construction, reconstruction
37 or erection is pursuant to a plan of the taxpayer which was in existence
38 December thirty-first, nineteen hundred sixty-seven and not thereafter
39 substantially modified, and such acquisition, construction, recon-
40 struction or erection would qualify under the rules in paragraphs four,
41 five or six of subsection (h) of section forty-eight of the internal
42 revenue code provided all references in such paragraphs four, five and
43 six to the dates October nine, nineteen hundred sixty-six, and October
44 ten, nineteen hundred sixty-six, shall be read as December thirty-first,
45 nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction
46 under clauses (A), (B) or (C) of this subparagraph only if the tangible
47 property shall be delivered or the construction, reconstruction or
48 erection shall be completed on or before December thirty-first, nineteen
49 hundred sixty-nine, except in the case of tangible property which is
50 acquired, constructed, reconstructed or erected pursuant to a contract
51 which was, on or before December thirty-first, nineteen hundred sixty-
52 seven, and at all times thereafter, binding on the taxpayer. Provided,
53 however, for any taxable year beginning on or after January first, nine-
54 teen hundred sixty-eight, a taxpayer shall not be allowed a deduction
55 under this paragraph with respect to tangible personal property leased
56 by it to any other person or corporation. Accordingly, any contract or

1 agreement to lease or rent or for a license to use such property shall
2 be considered a lease. With respect to property which the taxpayer uses
3 itself for purposes other than leasing for part of a taxable year and
4 leases for a part of a taxable year, the taxpayer shall be allowed a
5 deduction under this paragraph in proportion to the part of the year it
6 uses such property.

7 (4) If the deductions allowable for any taxable year, pursuant to this
8 subdivision, exceed the portion of the taxpayer's entire net income
9 allocated to the city for such year, the excess may be carried over to
10 the following taxable year or years and may be deducted from the portion
11 of the taxpayer's entire net income allocated to the city for such year
12 or years.

13 (5) In any taxable year when property is sold or otherwise disposed
14 of, with respect to which a deduction has been allowed pursuant to
15 subparagraph one or two of this paragraph, the gain or loss thereon
16 entering into the computation of federal taxable income shall be disre-
17 garded in computing entire net income, and there shall be added to or
18 subtracted from the portion of entire net income allocated within the
19 city the gain or loss upon such sale or other disposition. In computing
20 such gain or loss the basis of the property sold or disposed of shall be
21 adjusted to reflect the deduction allowed with respect to such property
22 pursuant to subparagraph one or two of this paragraph. Provided, howev-
23 er, that no loss shall be recognized for the purposes of this subpara-
24 graph with respect to a sale or other disposition of property to a
25 person whose acquisition thereof is not a purchase as defined in section
26 one hundred seventy-nine (d) of the internal revenue code.

27 (e) At the election of the taxpayer there shall be deducted from the
28 portion of its entire net income allocated within the city either or
29 both of the items set forth in subparagraphs one and two of this para-
30 graph, except that only one of such deductions shall be allowed with
31 respect to any one item of property.

32 (1) Depreciation with respect to any property such as described in
33 subparagraphs three and four of this paragraph, not exceeding twice the
34 depreciation allowed with respect to the same property for federal
35 income tax purposes. Such deduction shall be allowed only upon condition
36 that entire net income be computed without any deduction for the depre-
37 ciation of the same property, and the total of all deductions allowed in
38 any taxable year or years with respect to the depreciation of any such
39 property shall not exceed its cost or other basis multiplied by the
40 taxpayer's business allocation percentage determined under this subdivi-
41 sion for the first year it deducts such depreciation under this para-
42 graph.

43 (2) Expenditures paid or incurred during the taxable year for the
44 construction, reconstruction, erection or acquisition of any property
45 such as described in subparagraph three of this paragraph which is used
46 or to be used for purposes of research and development in the exper-
47 imental or laboratory sense. Such purposes shall not be deemed to
48 include the ordinary testing or inspection of materials or products for
49 quality control, efficiency surveys, management studies, consumer
50 surveys, advertising, promotions or research in connection with liter-
51 ary, historical or similar projects. Such deductions shall be allowed
52 only on condition that it does not exceed the amount of the expenditures
53 multiplied by the taxpayer's business allocation percentage determined
54 under this subdivision for the year the expenditures are paid or
55 incurred and that entire net income for the taxable year and all
56 succeeding taxable years be computed without the deduction of any such

1 expenditures and without any deduction for depreciation of the same
2 property, except to the extent that its basis may be attributable to
3 factors other than such expenditures, or in case a deduction is allow-
4 able pursuant to this subparagraph for only a part of such expenditures,
5 on condition that any deduction allowed for federal income tax purposes
6 on account of such expenditures or on account of depreciation of the
7 same property be proportionately reduced in computing entire net income
8 for the taxable year and all succeeding taxable years. With respect to
9 property which is used or to be used for research and development only
10 in part, or during only part of its useful life, a proportionate part of
11 such expenditures shall be deductible. If all or part of such expendi-
12 tures with respect to any property shall have been deducted as provided
13 in this subparagraph, and such property is used for purposes other than
14 research and development to a greater extent than originally reported,
15 the taxpayer shall report such use in its report for the first taxable
16 year during which it occurs, and the commissioner of finance may recom-
17 pute the tax for the year or years for which such deduction was allowed,
18 and may assess any additional tax resulting from such recomputation
19 regardless of the time limitations set forth in section 11-674 of this
20 chapter.

21 (3) Such deduction shall be allowed only with respect to tangible
22 property which is depreciable pursuant to section one hundred sixty-sev-
23 en of the internal revenue code, having a situs in the city and used in
24 the taxpayer's trade or business (A) the construction, reconstruction or
25 erection of which is completed after December thirty-first, nineteen
26 hundred sixty-seven, and then only with respect to that portion of the
27 basis thereof or the expenditures relating thereto which is properly
28 attributable to such construction, reconstruction or erection after
29 December thirty-first, nineteen hundred sixty-five, or (B) acquired
30 after December thirty-first, nineteen hundred sixty-seven by purchase or
31 defined in section one hundred seventy-nine (d) of the internal revenue
32 code, if the original use of such property commenced with the taxpayer,
33 commenced in this state and commenced after December thirty-first nine-
34 teen hundred sixty-five. Provided, however, for any taxable year begin-
35 ning on or after January first, nineteen hundred sixty-eight, a taxpayer
36 shall not be allowed a deduction under this paragraph with respect to
37 tangible personal property leased by it to any other person or corpo-
38 ration. Accordingly, any contract or agreement to lease or rent or for a
39 license to use such property shall be considered a lease. With respect
40 to property which the taxpayer uses itself for purposes other than leas-
41 ing for part of a taxable year and leases for a part of a taxable year,
42 the taxpayer shall be allowed a deduction under this paragraph in
43 proportion to the part of the year it uses such property.

44 (4) A deduction under subparagraph one of this paragraph shall be
45 allowed with respect to tangible property described in subparagraph
46 three only if such property is principally used by the taxpayer in the
47 production of goods by manufacturing; processing; assembling; refining;
48 mining; extracting; farming; agriculture; horticulture; floriculture;
49 viticulture or commercial fishing. For purposes of this subparagraph,
50 manufacturing shall mean the process of working raw materials into wares
51 suitable for use or which gives new shapes, new qualities or new combi-
52 nations to matter which already has gone through some artificial process
53 by the use of machinery, tools, appliances and other similar equipment.
54 Property used in the production of goods shall include machinery, equip-
55 ment or other tangible property which is principally used in the repair
56 and service of other machinery, equipment or other tangible property

1 used principally in the production of goods and shall include all facil-
2 ities used in the manufacturing operation, including storage of material
3 to be used in manufacturing and of the products that are manufactured.
4 At the option of the taxpayer, air and water pollution control facili-
5 ties which qualify for elective deductions under paragraph (g) of subdivi-
6 sion eight of section 11-602 of this subchapter may be treated, for
7 purposes of this paragraph, as tangible property principally used in the
8 production of goods by manufacturing; processing; assembling; refining;
9 mining; extracting; farming; agriculture; horticulture; floriculture;
10 viticulture; or commercial fishing, in which event, a deduction shall
11 not be allowed under such paragraph (g).

12 (5) Subject to the limitation imposed by subparagraphs one and two of
13 this paragraph, if the deductions allowable for any taxable year, pursu-
14 ant to this subdivision, exceed the portion of the taxpayer's entire net
15 income allocated to the city for such year, the excess may be carried
16 over to the following taxable year or years and may be deducted from the
17 portion of the taxpayer's entire net income allocated to the city for
18 such year or years.

19 (6) In any taxable year when property is sold or otherwise disposed
20 of, with respect to which a deduction has been allowed pursuant to
21 subparagraph one or two of this paragraph, the gain or loss thereon
22 entering into the computation of federal taxable income shall be disre-
23 garded in computing entire net income, and there shall be added to or
24 subtracted from the portion of entire net income allocated within the
25 city the gain or loss upon such sale or other disposition. In computing
26 such gain or loss the basis of the property sold or disposed of shall be
27 adjusted to reflect the deduction allowed with respect to such property
28 pursuant to subparagraph one or two of this paragraph. Provided, howev-
29 er, that no loss shall be recognized for the purposes of this subpara-
30 graph with respect to a sale or other disposition of property to a
31 person whose acquisition thereof is not a purchase as defined in section
32 one hundred seventy-nine (d) of the internal revenue code.

33 4. The portion of the business capital of a taxpayer to be allocated
34 within the city shall be determined by multiplying the amount thereof by
35 the business allocation percentage determined as provided for in this
36 subdivision. Provided, however, such business allocation percentage, for
37 purposes of allocating business capital, shall (a) for taxable years
38 beginning before nineteen hundred ninety-four, be determined without
39 regard to clause (C) of subparagraph six of paragraph (a) of subdivision
40 three of this section and (b) for taxable years beginning after nineteen
41 hundred ninety-three, be determined with regard to such clause (C) but
42 only in the case of a taxpayer subject to the provisions of paragraph
43 (b) of subdivision six of section 11-602 of this subchapter.

44 5. The portion of the investment capital of a taxpayer to be allocated
45 within the city shall be determined by multiplying the amount thereof by
46 the investment allocation percentage determined as provided in this
47 subdivision.

48 7. The portion of the subsidiary capital of a taxpayer to be allocated
49 within the city shall be determined by (a) multiplying the amount of its
50 subsidiary capital invested in each subsidiary during the period covered
51 by its report, or, in the case of any such capital so invested during
52 only a portion of such period, such portion of such capital, by the
53 issuer's allocation percentage, as defined in subparagraph one of para-
54 graph (b) of subdivision three of this section, of each such subsidiary
55 and (b) adding together the sums so obtained.

1 8. If it shall appear to the commissioner of finance that any business
2 or investment allocation percentage determined as provided in this
3 subdivision does not properly reflect the activity, business, income or
4 capital of a taxpayer within the city, the commissioner of finance shall
5 be authorized in his or her discretion, in the case of a business allo-
6 cation percentage, to adjust it by (a) excluding one or more of the
7 factors therein, (b) including one or more other factors, such as
8 expenses, purchases, contract values, minus subcontract values, (c)
9 excluding one or more assets in computing such allocation percentage,
10 provided the income therefrom is also excluded in determining entire net
11 income, or (d) any other similar or different method calculated to
12 effect a fair and proper allocation of the income and capital reasonably
13 attributable to the city, and in the case of an investment allocation
14 percentage to adjust it by excluding one or more assets in computing
15 such percentage provided the income therefrom is also excluded in deter-
16 mining entire net income. The commissioner of finance from time to time
17 shall publish all rulings of general public interest with respect to any
18 application of the provisions of this subdivision.

19 9. If it shall appear to the commissioner of finance that any business
20 allocation percentage determined as provided in subdivisions one through
21 eight of this section does not properly reflect the activity, business,
22 income or capital of a taxpayer within the city, the commissioner of
23 finance shall be authorized in his or her discretion to adjust it by (a)
24 excluding one or more of the factors therein, (b) including one or more
25 other factors, such as expenses, purchases, contract values, minus
26 subcontract values, (c) excluding one or more assets in computing such
27 allocation percentage, provided the income therefrom, is also excluded
28 in determining entire net income, or (d) any other similar or different
29 method calculated to effect a fair and proper allocation of the income
30 and capital reasonably attributable to the city, and in the case of an
31 investment allocation percentage, to adjust it by excluding one or more
32 assets in computing such percentage provided the income therefrom is
33 also excluded in determining entire net income. The commissioner of
34 finance from time to time shall publish all rulings of general public
35 interest with respect to any application of the provisions of this
36 subdivision.

37 11. (a) A taxpayer shall be allowed a credit, to be refunded in the
38 manner as provided in this subdivision, against the tax imposed by this
39 chapter. The amount of such credit shall be fifty percent of the tax
40 incurred in market making transactions under the provisions of article
41 twelve of the tax law on such transactions subject to such tax occurring
42 on and after August first, nineteen hundred seventy-six and paid by such
43 taxpayer, except when such tax shall have been paid pursuant to section
44 two hundred seventy-nine-a of such tax law.

45 (b) For purposes of this subdivision:

46 (1) the term "taxpayer" shall mean any corporation subject to tax
47 under this chapter registered with the United States securities and
48 exchange commission in accordance with subsection (b) of section fifteen
49 of the securities exchange act of nineteen hundred thirty-four, as
50 amended, and acting as a dealer in a transaction described in subpara-
51 graph two of this paragraph, and

52 (2) the term "market making transaction" shall mean any transaction
53 involving a sale, including a short sale, by a dealer of shares or
54 certificates subject to the tax imposed by article twelve of the tax
55 law, provided such shares or certificates are sold:

1 (i) as stock in trade or inventory or as property held for sale in the
2 ordinary course of such dealer's trade or business, including transfers
3 which are part of an underwriting,

4 (ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge
5 transaction involving a long or short position in any equity security
6 and a long or short position in a security entitling the holder to
7 acquire or sell such equity security; or (c) a risk arbitrage trans-
8 action in connection with a merger, acquisition, tender offer, recap-
9 italization, reorganization, or similar transaction, or

10 (iii) to offset a transaction made in error.

11 Provided, however, that, except as to subclause (c) of clause (ii) of
12 this paragraph, the term "market making transaction" shall not include
13 any sale of shares or certificates identified in such dealer's records
14 as a security held for investment within the meaning of section twelve
15 hundred thirty-six of the internal revenue code.

16 (c) The credit allowed under this subdivision for any taxable year
17 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
18 ited or refunded in accordance with the provisions of section 11-677 of
19 this chapter, except as otherwise provided in subdivision three of
20 section 11-606 and subdivision eleven of section 11-608; provided,
21 however, that the provisions of this title notwithstanding, the amount
22 to be refunded pursuant to this subdivision shall not be paid prior to
23 the first day of the eighth month following the close of the taxable
24 year, and the provisions of subdivision three of section 11-679 of this
25 chapter notwithstanding interest shall be allowed and paid on the over-
26 payment of the credit under this subdivision from the first day of the
27 eleventh month following the close of the taxable year, or three months
28 after a claim for the credit or refund provided for in this subdivision
29 has been filed, whichever is later.

30 (d) Provided, however, that the credit provided under this subdivision
31 shall be allowed only to the extent that the amount of credit allowable
32 with respect to market making transactions under the provisions of this
33 subdivision, determined without regard to the provisions of this para-
34 graph, exceeds fifty percent of all rebates, provided for under the
35 provisions of section two hundred eighty-a of the tax law, allowed for
36 such taxes incurred in the same market making transactions with respect
37 to which the credit is determined. No credit shall be allowed under this
38 subdivision with respect to any tax incurred in market making trans-
39 actions occurring on or after October first, nineteen hundred eighty-
40 one.

41 12. (a) In addition to the credit allowed by subdivision eleven of
42 this section, a taxpayer shall be allowed a credit against the tax
43 imposed by this subchapter to be credited or refunded in the manner
44 provided in this section. The amount of such credit shall be the excess
45 of (A) the amount of sales and compensating use taxes imposed by section
46 eleven hundred seven of the tax law during the taxpayer's taxable year
47 which became legally due on or after and was paid on or after July
48 first, nineteen hundred seventy-seven, less any credits or refunds of
49 such taxes, with respect to the purchase or use by the taxpayer of
50 machinery or equipment for use or consumption directly and predominantly
51 in the production of tangible personal property, gas, electricity,
52 refrigeration or steam for sale, by manufacturing, processing, generat-
53 ing, assembling, refining, mining or extracting, or telephone central
54 office equipment or station apparatus or comparable telegraph equipment
55 for use directly and predominantly in receiving at destination or initi-
56 ating and switching telephone or telegraph communication, but not

1 including parts with a useful life of one year or less or tools or
2 supplies used in connection with such machinery, equipment or apparatus
3 over (B) the amount of any credit for such sales and compensating use
4 taxes allowed or allowable against the taxes imposed by subchapter two
5 of chapter eleven of this title for any periods embraced within the
6 taxable year of the taxpayer under this subchapter.

7 (b) The credit allowed under this subdivision for any taxable year
8 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
9 ited or refunded, without interest, in accordance with the provisions of
10 section 11-677 of this chapter.

11 (c) Where the taxpayer receives a refund or credit of any tax imposed
12 under section eleven hundred seven of the tax law for which the taxpayer
13 had claimed a credit under the provisions of this subdivision in a prior
14 taxable year, the amount of such tax refund shall be added to the tax
15 imposed by subdivision one of section 11-603 of this subchapter, and
16 such amount shall be subtracted in computing entire net income for the
17 taxable year.

18 13. (a) In addition to any other credit allowed by this section, a
19 taxpayer shall be allowed a credit against the tax imposed by this
20 subchapter to be credited or refunded without interest, in the manner
21 provided in this section.

22 (1) Where a taxpayer shall have relocated to the city from a location
23 outside the state, and by such relocation shall have created a minimum
24 of one hundred industrial or commercial employment opportunities; and
25 where such taxpayer shall have entered into a written lease for the
26 relocation premises, the terms of which lease provide for increased
27 additional payments to the landlord which are based solely and directly
28 upon any increase or addition in real estate taxes imposed on the leased
29 premises, the taxpayer upon approval and certification by the industrial
30 and commercial incentive board shall be entitled to a credit against the
31 tax imposed by this subchapter. The amount of such credit shall be: An
32 amount equal to the annual increased payments actually made by the
33 taxpayer to the landlord which are solely and directly attributable to
34 an increase or addition to the real estate tax imposed upon the leased
35 premises. Such credit shall be allowed only to the extent that the
36 taxpayer has not otherwise claimed said amount as a deduction against
37 the tax imposed by this subchapter.

38 The industrial and commercial incentive board in approving and certi-
39 fying to the qualifications of the taxpayer to receive the tax credit
40 provided for in this subdivision shall first determine that the appli-
41 cant has met the requirements of this section, and further, that the
42 granting of the tax credit to the applicant is in the "public interest".
43 In determining that the granting of the tax credit is in the public
44 interest, the board shall make affirmative findings that: the granting
45 of the tax credit to the applicant will not effect an undue hardship on
46 similar taxpayers already located within the city; the existence of this
47 tax incentive has been instrumental in bringing about the relocation of
48 the applicant to the city; and the granting of the tax credit will
49 foster the economic recovery and economic development of the city.

50 The tax credit, if approved and certified by the industrial and
51 commercial incentive board, must be utilized annually by the taxpayer
52 for the length of the term of the lease or for a period not to exceed
53 ten years from the date of relocation whichever period is shorter.

54 (2) When used in this section, the following terms shall have the
55 following meanings:

1 (i) "Employment opportunity" means the creation of a full time posi-
2 tion of gainful employment for an industrial or commercial employee and
3 the actual hiring of such employee for the said position.

4 (ii) "Industrial employee" means one engaged in the manufacture or
5 assembling of tangible goods or the processing of raw materials.

6 (iii) "Commercial employee" means one engaged in the buying, selling
7 or otherwise providing of goods or services other than on a retail
8 basis.

9 (iv) "Retail" means the selling or otherwise disposing or furnishing
10 of tangible goods or services directly to the ultimate user or consumer.

11 (v) "Full time position" means the hiring of an industrial or commer-
12 cial employee in a position of gainful employment where the number of
13 hours worked by such employees is not less than thirty hours during any
14 given work week.

15 (vi) "Industrial and commercial incentive board" means the board
16 created pursuant to part three of subchapter two of chapter two of this
17 title.

18 (b) The credit allowed under this subdivision for any taxable year
19 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
20 ited or refunded, without interest, in accordance with the provisions of
21 section 11-677 of this chapter.

22 14. (a) In addition to any other credit allowed by this section, a
23 taxpayer shall be allowed a credit against the tax imposed by this
24 subchapter to be credited or refunded without interest, in the manner
25 provided in this section. The amount of such credit shall be:

26 (1) A maximum of three hundred dollars for each commercial employment
27 opportunity and a maximum of five hundred dollars for each industrial
28 employment opportunity relocated to the city from an area outside the
29 state. Such credit shall be allowed to a taxpayer who relocates a mini-
30 mum of ten employment opportunities. The credit shall be allowed against
31 employment opportunity relocation costs incurred by the taxpayer. Such
32 credit shall be allowed only to the extent that the taxpayer has not
33 claimed a deduction for allowable employment opportunity relocation
34 costs. Such credit may be taken by the taxpayer in whole or in part in
35 the year in which the employment opportunity is relocated by such
36 taxpayer or either of the two years succeeding such event, provided,
37 however, no credit shall be allowed under this subdivision to a taxpayer
38 for industrial employment opportunities relocated to premises (A) that
39 are within an industrial business zone established pursuant to section
40 22-626 of this code and (B) for which a binding contract to purchase or
41 lease was first entered into by the taxpayer on or after July first, two
42 thousand five.

43 The commissioner of finance is empowered to promulgate rules and regu-
44 lations and to prescribe the form of application to be used by a taxpay-
45 er seeking such credit.

46 (2) When used in this section: (i) "Employment opportunity" means the
47 creation of a full time position of gainful employment for an industrial
48 or commercial employee and the actual hiring of such employee for the
49 said position.

50 (ii) "Industrial employee" means one engaged in the manufacture or
51 assembling of tangible goods or the processing of raw materials.

52 (iii) "Commercial employee" means one engaged in the buying, selling
53 or otherwise providing of goods or services other than on a retail
54 basis.

55 (iv) "Retail" means the selling or otherwise disposing of tangible
56 goods directly to the ultimate user or consumer.

1 (v) "Full time position" means the hiring of an industrial or commer-
2 cial employee in a position of gainful employment where the number of
3 hours worked by such employee is not less than thirty hours during any
4 given work week.

5 (vi) "Employment opportunity relocation costs" means the costs
6 incurred by the taxpayer in moving furniture, files, papers and office
7 equipment into the city from a location outside the state; the costs
8 incurred by the taxpayer in the moving and installation of machinery and
9 equipment into the city from a location outside the state; the costs of
10 installation of telephones and other communications equipment required
11 as a result of the relocation to the city from a location outside the
12 state; the cost incurred in the purchase of office furniture and
13 fixtures required as a result of the relocation to the city from a
14 location outside the state; and the cost of renovation of the premises
15 to be occupied as a result of the relocation provided, however, that
16 such renovation costs shall be allowable only to the extent that they do
17 not exceed seventy-five cents per square foot of the total area utilized
18 by the taxpayer in the occupied premises.

19 (b) The credit allowed under this section for any taxable year shall
20 be deemed to be an overpayment of tax by the taxpayer to be credited or
21 refunded without interest in accordance with the provisions of section
22 11-677 of this chapter.

23 17. (a) In addition to any other credit allowed by this section, a
24 taxpayer that has obtained the certifications required by chapter six-B
25 of title twenty-two of the preceding municipality code shall be allowed
26 a credit against the tax imposed by this subchapter. The amount of the
27 credit shall be the amount determined by multiplying five hundred
28 dollars or, in the case of a taxpayer that has obtained pursuant to
29 chapter six-B of such title twenty-two a certification of eligibility
30 dated on or after July first, nineteen hundred ninety-five, one thousand
31 dollars or, in the case of an eligible business that has obtained pursu-
32 ant to chapter six-B of such title twenty-two a certification of eligi-
33 bility dated on or after July first, two thousand, for a relocation to
34 eligible premises located within a revitalization area defined in subdivi-
35 sion (n) of section 22-621 of the code of the preceding municipality,
36 three thousand dollars, by the number of eligible aggregate employment
37 shares maintained by the taxpayer during the taxable year with respect
38 to particular premises to which the taxpayer has relocated; provided,
39 however, with respect to a relocation for which no application for a
40 certificate of eligibility is submitted prior to July first, two thou-
41 sand three, to eligible premises that are not within a revitalization
42 area, if the date of such relocation as determined pursuant to subdivi-
43 sion (j) of section 22-621 of the code of the preceding municipality is
44 before July first, nineteen hundred ninety-five, the amount to be multi-
45 plied by the number of eligible aggregate employment shares shall be
46 five hundred dollars, and with respect to a relocation for which no
47 application for a certificate of eligibility is submitted prior to July
48 first, two thousand three, to eligible premises that are within a revit-
49 alization area, if the date of such relocation as determined pursuant
50 to subdivision (j) of such section is before July first, nineteen
51 hundred ninety-five, the amount to be multiplied by the number of eligi-
52 ble aggregate employment shares shall be five hundred dollars, and if
53 the date of such relocation as determined pursuant to subdivision (j) of
54 such section is on or after July first, nineteen hundred ninety-five,
55 and before July first, two thousand, one thousand dollars; provided,
56 however, that no credit shall be allowed for the relocation of any

1 retail activity or hotel services; provided, further, that no credit
2 shall be allowed under this subdivision to any taxpayer that has elected
3 pursuant to subdivision (d) of section 22-622 of the code of the preced-
4 ing municipality to take such credit against a gross receipts tax
5 imposed by chapter eleven of this title; and provided that in the case
6 of an eligible business that has obtained pursuant to chapter six-B of
7 such title twenty-two certifications of eligibility for more than one
8 relocation, the portion of the total amount of eligible aggregate
9 employment shares to be multiplied by the dollar amount specified in
10 this subdivision for each such certification of a relocation shall be
11 the number of total attributed eligible aggregate employment shares
12 determined with respect to such relocation pursuant to subdivision (o)
13 of section 22-621 of the code of the preceding municipality. For
14 purposes of this subdivision, the terms "eligible aggregate employment
15 shares," "relocate," "retail activity" and "hotel services" shall have
16 the meanings ascribed by section 22-621 of the code of the preceding
17 municipality.

18 (b) The credit allowed under this subdivision with respect to eligible
19 aggregate employment shares maintained with respect to particular prem-
20 ises to which the taxpayer has relocated shall be allowed for the first
21 taxable year during which such eligible aggregate employment shares are
22 maintained with respect to such premises and for any of the twelve
23 succeeding taxable years during which eligible aggregate employment
24 shares are maintained with respect to such premises; provided that the
25 credit allowed for the twelfth succeeding taxable year shall be calcu-
26 lated by multiplying the number of eligible aggregate employment shares
27 maintained with respect to such premises in the twelfth succeeding taxa-
28 ble year by the lesser of one and a fraction the numerator of which is
29 such number of days in the taxable year of relocation less the number of
30 days the eligible business maintained employment shares in the eligible
31 premises in the taxable year of relocation and the denominator of which
32 is the number of days in such twelfth succeeding taxable year during
33 which such eligible aggregate employment shares are maintained with
34 respect to such premises. Except as provided in paragraph (d) of this
35 subdivision, if the amount of the credit allowable under this subdivi-
36 sion for any taxable year exceeds the tax imposed for such year, the
37 excess may be carried over, in order, to the five immediately succeeding
38 taxable years and, to the extent not previously deductible, may be
39 deducted from the taxpayer's tax for such years.

40 (c) The credit allowable under this subdivision shall be deducted
41 after the credit allowed by subdivision eighteen of this section, but
42 prior to the deduction of any other credit allowed by this section.

43 (d) In the case of a taxpayer that has obtained a certification of
44 eligibility pursuant to chapter six-B of title twenty-two of the code of
45 the preceding municipality dated on or after July first, two thousand
46 for a relocation to eligible premises located within the revitalization
47 area defined in subdivision (n) of section 22-621 of the code of the
48 preceding municipality, the credits allowed under this subdivision, or
49 in the case of a taxpayer that has relocated more than once, the portion
50 of such credits attributed to such certification of eligibility pursuant
51 to paragraph (a) of this subdivision, against the tax imposed by this
52 chapter for the taxable year of such relocation and for the four taxable
53 years immediately succeeding the taxable year of such relocation, shall
54 be deemed to be overpayments of tax by the taxpayer to be credited or
55 refunded, without interest, in accordance with the provisions of section
56 11-677 of this chapter. For such taxable years, such credits or portions

1 thereof may not be carried over to any succeeding taxable year;
2 provided, however, that this paragraph shall not apply to any relocation
3 for which an application for a certification of eligibility was not
4 submitted prior to July first, two thousand three, unless the date of
5 such relocation is on or after July first, two thousand.

6 17-a. (a) In addition to any other credit allowed by this section, a
7 taxpayer shall be allowed a credit against the tax imposed by this
8 subchapter to be credited or refunded in the manner provided in this
9 subdivision. The amount of such credit shall be equal to the amount of
10 sales and compensating use taxes imposed by section eleven hundred seven
11 of the tax law during the taxpayer's taxable year, and the amount of any
12 interest imposed in connection therewith, which was paid after January
13 first, nineteen hundred ninety-five, less any credit or refund of such
14 taxes, or such interest, with respect to the purchase or use by the
15 taxpayer of the services described in subdivision (b) of section eleven
16 hundred five-b of the tax law.

17 (b) The credit allowed under this subdivision for any taxable year
18 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
19 ited or refunded, without interest, in accordance with the provisions of
20 section 11-677 of this chapter.

21 (c) Where the taxpayer receives a refund or credit of any tax imposed
22 under section eleven hundred seven of the tax law, or of any interest
23 imposed in connection therewith, for which the taxpayer had claimed a
24 credit under the provisions of this subdivision in a prior taxable year,
25 the amount of such tax, or such interest, refund or credit shall be
26 added to the tax imposed by subdivision one of section 11-603 of this
27 subchapter, and such amount shall be subtracted in computing entire net
28 income for the taxable year.

29 17-b. (a) For taxable years beginning on or after January first, two
30 thousand six, in addition to any other credit allowed by this section,
31 an eligible business that first enters into a binding contract on or
32 after July first, two thousand five to purchase or lease eligible prem-
33 ises to which it relocates shall be allowed a one-time credit against
34 the tax imposed by this subchapter to be credited or refunded in the
35 manner hereinafter provided in this subdivision. The amount of such
36 credit shall be one thousand dollars per full-time employee; provided,
37 however, that the amount of such credit shall not exceed the lesser of
38 actual relocation costs or one hundred thousand dollars.

39 (b) When used in this subdivision, the following terms shall have the
40 following meanings:

41 (i) "Eligible business" means any business subject to tax under this
42 subchapter that (1) has been conducting substantial business operations
43 and engaging primarily in industrial and manufacturing activities at one
44 or more locations within the city of Staten Island or outside the state
45 of New York continuously during the twenty-four consecutive full months
46 immediately preceding relocation, (2) has leased the premises from which
47 it relocates continuously during the twenty-four consecutive full months
48 immediately preceding relocation, (3) first enters into a binding
49 contract on or after July first, two thousand five to purchase or lease
50 eligible premises to which such business will relocate, and (4) will be
51 engaged primarily in industrial and manufacturing activities at such
52 eligible premises.

53 (ii) "Eligible premises" means premises located entirely within an
54 industrial business zone. For any eligible business, an industrial busi-
55 ness zone tax credit shall not be granted with respect to more than one
56 eligible premises.

1 (iii) "Full-time employee" means (1) one person gainfully employed in
2 an eligible premises by an eligible business where the number of hours
3 required to be worked by such person is not less than thirty-five hours
4 per week; or (2) two persons gainfully employed in an eligible premises
5 by an eligible business where the number of hours required to be worked
6 by each such person is more than fifteen hours per week but less than
7 thirty-five hours per week.

8 (iv) "Industrial business zone" means an area within the city of
9 Staten Island established pursuant to section 22-626 of the code of the
10 preceding municipality.

11 (v) "Industrial business zone tax credit" means a credit, as provided
12 for in this subdivision, against a tax imposed under this subchapter.

13 (vi) "Industrial and manufacturing activities" means activities
14 involving the assembly of goods to create a different article, or the
15 processing, fabrication, or packaging of goods. Industrial and manufac-
16 turing activities shall not include waste management or utility
17 services.

18 (vii) "Relocation" means the physical relocation of furniture,
19 fixtures, equipment, machinery and supplies directly to an eligible
20 premises, from one or more locations of an eligible business, including
21 at least one location at which such business conducts substantial busi-
22 ness operations and engages primarily in industrial and manufacturing
23 activities. For purposes of this subdivision, the date of relocation
24 shall be (1) the date of the completion of the relocation to the eligi-
25 ble premises or (2) ninety days from the commencement of the relocation
26 to the eligible premises, whichever is earlier.

27 (viii) "Relocation costs" means costs incurred in the relocation of
28 such furniture, fixtures, equipment, machinery and supplies, including,
29 but not limited to, the cost of dismantling and reassembling equipment
30 and the cost of floor preparation necessary for the reassembly of the
31 equipment. Relocation costs shall include only such costs that are
32 incurred during the ninety-day period immediately following the
33 commencement of the relocation to an eligible premises. Relocation costs
34 shall not include costs for structural or capital improvements or items
35 purchased in connection with the relocation.

36 (c) The credit allowed under this subdivision for any taxable year
37 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
38 ited or refunded without interest, in accordance with the provisions of
39 section 11-677 of this chapter.

40 (d) The number of full-time employees for the purposes of calculating
41 an industrial business tax credit shall be the average number of full-
42 time employees, calculated on a weekly basis, employed in the eligible
43 premises by the eligible business in the fifty-two week period imme-
44 diately following the earlier of (1) the date of the completion of the
45 relocation to eligible premises or (2) ninety days from the commencement
46 of the relocation to the eligible premises.

47 (e) The credit allowed under this subdivision must be taken by the
48 taxpayer in the taxable year in which such twelve-month period selected
49 by the taxpayer ends.

50 (f) For the purposes of calculating entire net income in the taxable
51 year that an industrial business tax credit is allowed, a taxpayer must
52 add back the amount of the credit allowed under this subdivision, to the
53 extent of any relocation costs deducted in the current taxable year or a
54 prior taxable year in calculating federal taxable income.

55 (g) The credit allowed under this subdivision shall not be granted for
56 an eligible business for more than one relocation, provided, however, an

1 industrial business tax credit shall not be granted if the eligible
2 business receives benefits pursuant to chapter six-B or six-C of title
3 twenty-two of the code of the preceding municipality, through a grant
4 program administered by the business relocation assistance corporation,
5 or through the New York city printers relocation fund grant.

6 (h) The commissioner of finance is authorized to promulgate rules and
7 regulations and to prescribe forms necessary to effectuate the purposes
8 of this subdivision.

9 18. (a) If a corporation is a partner in an unincorporated business
10 taxable under chapter five of this title, and is required to include in
11 entire net income its distributive share of income, gain, loss and
12 deductions of, or guaranteed payments from, such unincorporated busi-
13 ness, such corporation shall be allowed a credit against the tax imposed
14 by this subchapter equal to the lesser of the amounts determined in
15 subparagraphs one and two of this paragraph:

16 (1) The amount determined in this subparagraph is the product of (A)
17 the sum of (i) the tax imposed by chapter five of this title on the
18 unincorporated business for its taxable year ending within or with the
19 taxable year of the corporation and paid by the unincorporated business
20 and (ii) the amount of any credit or credits taken by the unincorporated
21 business under section 11-503 of this title, except the credit allowed
22 by subdivision (b) of such section, for its taxable year ending within
23 or with the taxable year of the corporation, to the extent that such
24 credits do not reduce such unincorporated business's tax below zero, and
25 (B) a fraction, the numerator of which is the net total of the corpo-
26 ration's distributive share of income, gain, loss and deductions of, and
27 guaranteed payments from, the unincorporated business for such taxable
28 year, and the denominator of which is the sum, for such taxable year, of
29 the net total distributive shares of income, gain, loss and deductions
30 of, and guaranteed payments to, all partners in the unincorporated busi-
31 ness for whom or which such net total, as separately determined for each
32 partner, is greater than zero.

33 (2) The amount determined in this subparagraph is the product of (A)
34 the excess of (i) the tax computed under clause one of subparagraph (a)
35 of paragraph E of subdivision one of this section, without allowance of
36 any credits allowed by this section, over (ii) the tax so computed,
37 determined as if the corporation had no such distributive share or guar-
38 anteed payments with respect to the unincorporated business, and (B) a
39 fraction, the numerator of which is four and the denominator of which is
40 eight and eighty-five one-hundredths, provided, however, that the
41 amounts computed in clauses (i) and (ii) of this subparagraph shall be
42 computed with the following modifications:

43 (I) such amounts shall be computed without taking into account any
44 carryforward or carryback by the partner of a net operating loss;

45 (II) if, prior to taking into account any distributive share or guar-
46 anteed payments from any unincorporated business or any net operating
47 loss carryforward or carryback, the entire net income of the partner is
48 less than zero, such entire net income shall be treated as zero; and

49 (III) if such partner's net total distributive share of income, gain,
50 loss and deductions of, and guaranteed payments from, any unincorporated
51 business is less than zero, such net total shall be treated as zero. The
52 amount determined in this subparagraph shall not be less than zero.

53 (b)(1) Notwithstanding anything to the contrary in paragraph (a) of
54 this subdivision, in the case of a corporation that, before the applica-
55 tion of this subdivision or any other credit allowed by this section, is
56 liable for the tax on entire net income under clause one of subparagraph

1 (a) of paragraph E of subdivision one of this section, the credit or the
2 sum of the credits that may be taken by such corporation for a taxable
3 year under this subdivision with respect to an unincorporated business
4 or unincorporated businesses in which it is a partner shall not exceed
5 the tax so computed, without allowance of any credits allowed by this
6 section, multiplied by a fraction the numerator of which is four and the
7 denominator of which is eight and eighty-five one-hundredths. If the
8 credit allowed under this subdivision or the sum of such credits exceeds
9 the product of such tax and such fraction, the amount of the excess may
10 be carried forward, in order, to each of the seven immediately succeed-
11 ing taxable years and, to the extent not previously taken, shall be
12 allowed as a credit in each of such years. Accordingly, the credit
13 determined for the taxable year under paragraph (a) of this subdivision
14 shall be taken before taking any credit carryforward pursuant to this
15 paragraph and the credit carryforward attributable to the earliest tax-
16 able year shall be taken before taking a credit carryforward attributable
17 to a subsequent taxable year.

18 (2) Notwithstanding anything to the contrary in paragraph (a) of this
19 subdivision, in the case of a corporation that, before the application
20 of this subdivision or any other credit allowed by this section, is
21 liable for the tax on entire net income plus certain salaries and other
22 compensation under clause three of subparagraph (a) of paragraph E of
23 subdivision one of this section, the maximum credit that may be taken in
24 any taxable year is the amount that will reduce the tax so computed,
25 without allowance of any credits allowed by this section, to zero. For
26 purposes of this paragraph each dollar of credit shall be applied so as
27 to reduce such tax for taxable years beginning before January first, two
28 thousand seven by sixty-six and thirty-eight one-hundredths cents; for
29 taxable years beginning on or after January first, two thousand seven
30 and before January first, two thousand eight by fifty-eight and eight
31 one-hundredths cents; for taxable years beginning on or after January
32 first, two thousand eight and before January first, two thousand nine by
33 forty-nine and seventy-eight one-hundredths cents; for taxable years
34 beginning on or after January first, two thousand nine and before Janu-
35 ary first, two thousand ten by forty-one and forty-eight one-hundredths
36 cents; and for taxable years beginning on or after January first, two
37 thousand ten by thirty-three and nineteen one-hundredths cents. If the
38 amount of credit allowed under this subdivision or the sum of such cred-
39 its exceeds the amount that may be taken against such tax, the amount of
40 the excess may be carried forward, in order, to each of the seven imme-
41 diately succeeding taxable years and, to the extent not previously
42 taken, shall be allowed as a credit in each of such years. Accordingly,
43 the credit determined for the taxable year under paragraph (a) of this
44 subdivision shall be taken before taking any credit carryforward pursu-
45 ant to this paragraph and the credit carryforward attributable to the
46 earliest taxable year shall be taken before taking a credit carryforward
47 attributable to a subsequent taxable year.

48 (3) No credit allowed under this subdivision may be taken in a taxable
49 year by a taxpayer that, in the absence of such credit, would be liable
50 for the tax computed on the basis of business and investment capital
51 under clause two of subparagraph (a) of paragraph E of subdivision one
52 of this section or the fixed-dollar minimum tax under clause four of
53 subparagraph (a) of paragraph E of subdivision one of this section. No
54 credit allowed under this subdivision may be taken against the tax
55 computed on the basis of subsidiary capital under subparagraph (b) of
56 paragraph E of subdivision one of this section.

1 (c) For corporations that file a report on a combined basis pursuant
2 to subdivision four of section 11-605 of this chapter, the credit
3 allowed by this subdivision shall be computed as if the combined group
4 were the partner in each unincorporated business from which any of the
5 members of such group had a distributive share or guaranteed payments,
6 provided, however, if more than one member of the combined group is a
7 partner in the same unincorporated business, for purposes of the calcu-
8 lation required in subparagraph one of paragraph (a) of this subdivi-
9 sion, the numerator of the fraction described in clause (B) of such
10 subparagraph one shall be the sum of the net total distributive shares
11 of income, gain, loss and deductions of, and guaranteed payments from,
12 the unincorporated business of all of the partners of the unincorporated
13 business within the combined group for which such net total, as sepa-
14 rately determined for each partner, is greater than zero, and the denom-
15 inator of such fraction shall be the sum of the net total distributive
16 shares of income, gain, loss and deductions of, and guaranteed payments
17 from, the unincorporated business of all partners in the unincorporated
18 business for whom or which such net total, as separately determined for
19 each partner, is greater than zero.

20 (d) The credit allowed by this subdivision shall not be allowed to a
21 partner in an unincorporated business with respect to any tax paid by
22 the unincorporated business under chapter five of this title for any
23 taxable year beginning before July first, nineteen hundred ninety-four.

24 (e) Notwithstanding any other provision of this subchapter, the credit
25 allowable under this subdivision shall be taken prior to the taking of
26 any other credit allowed by this section. Notwithstanding any other
27 provision of this subchapter, the application of this subdivision shall
28 not change the basis on which the taxpayer's tax is computed under para-
29 graph E of subdivision one of this section.

30 19. Lower Manhattan relocation and employment assistance credit. (a)
31 In addition to any other credit allowed by this section, a taxpayer that
32 has obtained the certifications required by chapter six-C of title twen-
33 ty-two of the code of the preceding municipality shall be allowed a
34 credit against the tax imposed by this chapter. The amount of the credit
35 shall be the amount determined by multiplying three thousand dollars by
36 the number of eligible aggregate employment shares maintained by the
37 taxpayer during the taxable year with respect to eligible premises to
38 which the taxpayer has relocated; provided, however, that no credit
39 shall be allowed for the relocation of any retail activity or hotel
40 services; provided, further, that no credit shall be allowed under this
41 subdivision to any taxpayer that has elected pursuant to subdivision (d)
42 of section 22-624 of the code of the preceding municipality to take such
43 credit against a gross receipts tax imposed under chapter eleven of this
44 title. For purposes of this subdivision, the terms "eligible aggregate
45 employment shares," "eligible premises," "relocate," "retail activity"
46 and "hotel services" shall have the meanings ascribed by section 22-623
47 of the code of the preceding municipality.

48 (b) The credit allowed under this subdivision with respect to eligible
49 aggregate employment shares maintained with respect to eligible premises
50 to which the taxpayer has relocated shall be allowed for the taxable
51 year of the relocation and for any of the twelve succeeding taxable
52 years during which eligible aggregate employment shares are maintained
53 with respect to eligible premises; provided that the credit allowed for
54 the twelfth succeeding taxable year shall be calculated by multiplying
55 the number of eligible aggregate employment shares maintained with
56 respect to eligible premises in the twelfth succeeding taxable year by

1 the lesser of one and a fraction the numerator of which is such number
2 of days in the taxable year of relocation less the number of days the
3 taxpayer maintained employment shares in eligible premises in the taxa-
4 ble year of relocation and the denominator of which is the number of
5 days in such twelfth taxable year during which such eligible aggregate
6 employment shares are maintained with respect to such premises.

7 (c) Except as provided in paragraph (d) of this subdivision, if the
8 amount of the credit allowable under this subdivision for any taxable
9 year exceeds the tax imposed for such year, the excess may be carried
10 over, in order, to the five immediately succeeding taxable years and, to
11 the extent not previously deductible, may be deducted from the taxpay-
12 er's tax for such years.

13 (d) The credits allowed under this subdivision, against the tax
14 imposed by this chapter for the taxable year of the relocation and for
15 the four taxable years immediately succeeding the taxable year of such
16 relocation, shall be deemed to be overpayments of tax by the taxpayer to
17 be credited or refunded, without interest, in accordance with the
18 provisions of section 11-677 of this chapter. For such taxable years,
19 such credits or portions thereof may not be carried over to any succeed-
20 ing taxable year.

21 (e) The credit allowable under this subdivision shall be deducted
22 after the credits allowed by subdivisions seventeen and eighteen of this
23 section, but prior to the deduction of any other credit allowed by this
24 section.

25 20. Film production credit. (a)(1) allowance of credit. A taxpayer
26 which is a qualified film production company, and which is subject to
27 tax under this subchapter, shall be allowed a credit against such tax,
28 pursuant to the provisions in paragraph (c) of this subdivision, to be
29 computed as provided in this subdivision.

30 (2) The amount of the credit shall be the product of five percent and
31 the qualified production costs paid or incurred in the production of a
32 qualified film, provided that the qualified production costs, excluding
33 post production costs, paid or incurred which are attributable to the
34 use of tangible property or the performance of services at a qualified
35 film production facility in the production of such qualified film equal
36 or exceed seventy-five percent of the production costs, excluding post
37 production costs, paid or incurred which are attributable to the use of
38 tangible property or the performance of services at any film production
39 facility within and without the city of Staten Island in the production
40 of such qualified film. However, if the qualified production costs,
41 excluding post production costs, which are attributable to the use of
42 tangible property or the performance of services at a qualified film
43 production facility in the production of such qualified film are less
44 than three million dollars, then the portion of the qualified production
45 costs attributable to the use of tangible property or the performance of
46 services in the production of such qualified film outside of a qualified
47 film production facility shall be allowed only if the shooting days
48 spent in the city of Staten Island outside of a film production facility
49 in the production of such qualified film equal or exceed seventy-five
50 percent of the total shooting days spent within and without the city of
51 Staten Island outside of a film production facility in the production of
52 such qualified film. The credit shall be allowed for the taxable year in
53 which the production of such qualified film is completed.

54 (3) No qualified production costs used by a taxpayer either as the
55 basis for the allowance of the credit provided for under this subdivi-
56 sion or used in the calculation of the credit provided for under this

1 subdivision shall be used by such taxpayer to claim any other credit
2 allowed pursuant to this title.

3 (b) Definitions. As used in this subdivision, the following terms
4 shall have the following meanings:

5 (1) "Qualified production costs" means production costs only to the
6 extent such costs are attributable to the use of tangible property or
7 the performance of services within the city of New York directly and
8 predominantly in the production, including pre-production and post
9 production, of a qualified film.

10 (2) "Production costs" means any costs for tangible property used and
11 services performed directly and predominantly in the production, includ-
12 ing pre-production and post production, of a qualified film.
13 "Production costs" shall not include (i) costs for a story, script or
14 scenario to be used for a qualified film and (ii) wages or salaries or
15 other compensation for writers, directors, including music directors,
16 producers and performers, other than background actors with no scripted
17 lines. "Production costs" generally include technical and crew
18 production costs, such as expenditures for film production facilities,
19 or any part thereof, props, makeup, wardrobe, film processing, camera,
20 sound recording, set construction, lighting, shooting, editing and
21 meals.

22 (3) "Qualified film" means a feature-length film, television film,
23 television pilot and/or each episode of a television series, regardless
24 of the medium by means of which the film, pilot or episode is created or
25 conveyed. "Qualified film" shall not include (i) a documentary film,
26 news or current affairs program, interview or talk program, "how-to"
27 (i.e., instructional) film or program, film or program consisting prima-
28 rily of stock footage, sporting event or sporting program, game show,
29 award ceremony, film or program intended primarily for industrial,
30 corporate or institutional end-users, fundraising film or program,
31 daytime drama (i.e., daytime "soap opera"), commercials, music videos or
32 "reality" program, or (ii) a production for which records are required
33 under section 2257 of title 18, United States code, to be maintained
34 with respect to any performer in such production, reporting of books,
35 films, etc. with respect to sexually explicit conduct.

36 (4) "Film production facility" shall mean a building and/or complex of
37 buildings and their improvements and associated back-lot facilities in
38 which films are or are intended to be regularly produced and which
39 contain at least one sound stage.

40 (5) "Qualified film production facility" shall mean a film production
41 facility in the city of Staten Island, which contains at least one sound
42 stage having a minimum of seven thousand square feet of contiguous
43 production space.

44 (6) "Qualified film production company" shall mean a corporation which
45 is principally engaged in the production of a qualified film and
46 controls the qualified film during production.

47 (c) Application of credit. (1) The credit allowed under this subdivi-
48 sion for any taxable year shall not reduce the tax due for such year to
49 less than the amount prescribed in clause four of subparagraph (a) of
50 paragraph E of subdivision one of this section. Provided, however, that
51 if the amount of the credit allowable under this subdivision for any
52 taxable year reduces the tax to such amount, fifty percent of the excess
53 shall be treated as an overpayment of tax to be credited or refunded in
54 accordance with the provisions of section 11-677 of this chapter;
55 provided, however, the provisions of section 11-679 of this chapter
56 notwithstanding, no interest shall be paid thereon. The balance of such

1 credit not credited or refunded in such taxable year may be carried over
2 to the immediately succeeding taxable year and may be credited against
3 the taxpayer's tax for such year. The excess, if any, of the amount of
4 the credit over the tax for such succeeding year shall be treated as an
5 overpayment of tax to be credited or refunded in accordance with the
6 provisions of section 11-677 of this chapter. Provided, however, the
7 provisions of section 11-679 of this chapter notwithstanding, no inter-
8 est shall be paid thereon.

9 (2) Notwithstanding anything contained in this section to the contra-
10 ry, the credit provided by this subdivision shall be allowed against the
11 taxes authorized by this chapter for the taxable year after reduction by
12 all other credits permitted by this chapter.

13 21. Biotechnology credit. (a) (1) A taxpayer that is a qualified
14 emerging technology company, engages in biotechnologies, and meets the
15 eligibility requirements of this subdivision, shall be allowed a credit
16 against the tax imposed by this subchapter. The amount of credit shall
17 be equal to the sum of the amounts specified in subparagraphs three,
18 four, and five of this paragraph, subject to the limitations in subpara-
19 graph seven of this paragraph and paragraph (b) of this subdivision. For
20 the purposes of this subdivision, "qualified emerging technology compa-
21 ny" shall mean a company located in a city: (A) whose primary products
22 or services are classified as emerging technologies and whose total
23 annual product sales are ten million dollars or less; or (B) a company
24 that has research and development activities in city and whose ratio of
25 research and development funds to net sales equals or exceeds the aver-
26 age ratio for all surveyed companies classified as determined by the
27 National Science Foundation in the most recent published results from
28 its Survey of Industry Research and Development, or any comparable
29 successor survey as determined by the department, and whose total annual
30 product sales are ten million dollars or less. For the purposes of this
31 subdivision, the definition of research and development funds shall be
32 the same as that used by the National Science Foundation in the afore-
33 mentioned survey. For the purposes of this subdivision, "biotechnolo-
34 gies" shall mean the technologies involving the scientific manipulation
35 of living organisms, especially at the molecular and/or the sub-molecu-
36 lar genetic level, to produce products conducive to improving the lives
37 and health of plants, animals, and humans; and the associated scientific
38 research, pharmacological, mechanical, and computational applications
39 and services connected with these improvements. Activities included with
40 such applications and services shall include, but not be limited to,
41 alternative mRNA splicing, DNA sequence amplification, antigenetic
42 switching bioaugmentation, bioenrichment, bioremediation, chromosome
43 walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and
44 sequencing, electroporation, gene translocation, genetic mapping, site-
45 directed mutagenesis, bio-transduction, bio-mechanical and bio-electri-
46 cal engineering, and bio-informatics.

47 (2) An eligible taxpayer shall (A) have no more than one hundred full-
48 time employees, of which at least seventy-five percent are employed in
49 the city, (B) have a ratio of research and development funds to net
50 sales, as referred to in section thirty-one hundred two-e of the public
51 authorities law, which equals or exceeds six percent during the calendar
52 year ending with or within the taxable year for which the credit is
53 claimed, and (C) have gross revenues, along with the gross revenues of
54 its "affiliates" and "related members" not exceeding twenty million
55 dollars for the calendar year immediately preceding the calendar year
56 ending with or within the taxable year for which the credit is claimed.

1 For the purposes of this subdivision, "affiliates" shall mean those
2 corporations that are members of the same affiliated group, as defined
3 in section fifteen hundred four of the internal revenue code, as the
4 taxpayer. For the purposes of this subdivision, the term "related
5 members" shall mean a person, corporation, or other entity, including an
6 entity that is treated as a partnership or other pass-through vehicle
7 for purposes of federal taxation, whether such person, corporation or enti-
8 ty is a taxpayer or not, where one such person, corporation or enti-
9 ty, or set of related persons, corporations or entities, directly or
10 indirectly owns or controls a controlling interest in another entity.
11 Such entity or entities may include all taxpayers under chapters five,
12 eleven and seventeen of this title, and subchapters two and three of
13 this chapter. A controlling interest shall mean, in the case of a corpo-
14 ration, either thirty percent or more of the total combined voting power
15 of all classes of stock of such corporation, or thirty percent or more
16 of the capital, profits or beneficial interest in such voting stock of
17 such corporation; and in the case of a partnership, association, trust
18 or other entity, thirty percent or more of the capital, profits or bene-
19 ficial interest in such partnership, association, trust or other entity.

20 (3) An eligible taxpayer shall be allowed a credit for eighteen per
21 centum of the cost or other basis for federal income tax purposes of
22 research and development property that is acquired by the taxpayer by
23 purchase as defined in subdivision (d) of section one hundred seventy-
24 nine of the internal revenue code and placed in service during the
25 calendar year that ends with or within the taxable year for which the
26 credit is claimed. Provided, however, for the purposes of this paragraph
27 only, an eligible taxpayer shall be allowed a credit for such percentage
28 of the (A) cost or other basis for federal income tax purposes for prop-
29 erty used in the testing or inspection of materials and products, (B)
30 the costs or expenses associated with quality control of the research
31 and development, (C) fees for use of sophisticated technology facilities
32 and processes, and (D) fees for the production or eventual commercial
33 distribution of materials and products resulting from the activities of
34 an eligible taxpayer as long as such activities fall under activities
35 relating to biotechnologies. The costs, expenses and other amounts for
36 which a credit is allowed and claimed under this paragraph shall not be
37 used in the calculation of any other credit allowed under this subchap-
38 ter. For the purposes of this subdivision, "research and development
39 property" shall mean property that is used for purposes of research and
40 development in the experimental or laboratory sense. Such purposes shall
41 not be deemed to include the ordinary testing or inspection of materials
42 or products for quality control, efficiency surveys, management studies,
43 consumer surveys, advertising, promotions, or research in connection
44 with literary, historical or similar projects.

45 (4) An eligible taxpayer shall be allowed a credit for nine per centum
46 of qualified research expenses paid or incurred by the taxpayer in the
47 calendar year that ends with or within the taxable year for which the
48 credit is claimed. For the purposes of this subdivision, "qualified
49 research expenses" shall mean expenses associated with in-house research
50 and processes, and costs associated with the dissemination of the
51 results of the products that directly result from such research and
52 development activities; provided, however, that such costs shall not
53 include advertising or promotion through media. In addition, costs asso-
54 ciated with the preparation of patent applications, patent application
55 filing fees, patent research fees, patent examinations fees, patent post
56 allowance fees, patent maintenance fees, and grant application expenses

1 and fees shall qualify as qualified research expenses. In no case shall
2 the credit allowed under this subparagraph apply to expenses for liti-
3 gation or the challenge of another entity's intellectual property
4 rights, or for contract expenses involving outside paid consultants.

5 (5) An eligible taxpayer shall be allowed a credit for qualified high-
6 technology training expenditures as described in this subparagraph paid
7 or incurred by the taxpayer during the calendar year that ends with or
8 within the taxable year for which the credit is claimed.

9 (A) The amount of credit shall be one hundred percent of the training
10 expenses described in clause (C) of this subparagraph, subject to a
11 limitation of no more than four thousand dollars per employee per calen-
12 dar year for such training expenses.

13 (B) Qualified high-technology training shall include a course or
14 courses taken and satisfactorily completed by an employee of the taxpay-
15 er at an accredited, degree granting post-secondary college or universi-
16 ty in a city that (i) directly relates to biotechnology activities, and
17 (ii) is intended to upgrade, retrain or improve the productivity or
18 theoretical awareness of the employee. Such course or courses may
19 include, but are not limited to, instruction or research relating to
20 techniques, meta, macro, or micro-theoretical or practical knowledge
21 bases or frontiers, or ethical concerns related to such activities. Such
22 course or courses shall not include classes in the disciplines of
23 management, accounting or the law or any class designed to fulfill the
24 discipline specific requirements of a degree program at the associate,
25 baccalaureate, graduate or professional level of these disciplines.
26 Satisfactory completion of a course or courses shall mean the earning
27 and granting of credit or equivalent unit, with the attainment of a
28 grade of "B" or higher in a graduate level course or courses, a grade of
29 "C" or higher in an undergraduate level course or courses, or a similar
30 measure of competency for a course that is not measured according to a
31 standard grade formula.

32 (C) Qualified high-technology training expenditures shall include
33 expenses for tuition and mandatory fees, software required by the insti-
34 tution, fees for textbooks or other literature required by the institu-
35 tion offering the course or courses, minus applicable scholarships and
36 tuition or fee waivers not granted by the taxpayer or any affiliates of
37 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified
38 high-technology expenditures do not include room and board, computer
39 hardware or software not specifically assigned for such course or cours-
40 es, late-charges, fines or membership dues and similar expenses. Such
41 qualified expenditures shall not be eligible for the credit provided by
42 this section unless the employee for whom the expenditures are disbursed
43 is continuously employed by the taxpayer in a full-time, full-year posi-
44 tion primarily located at a qualified site during the period of such
45 coursework and lasting through at least one hundred eighty days after
46 the satisfactory completion of the qualifying course-work. Qualified
47 high-technology training expenditures shall not include expenses for
48 in-house or shared training outside of a city higher education institu-
49 tion or the use of consultants outside of credit granting courses,
50 whether such consultants function inside of such higher education insti-
51 tution or not.

52 (D) If a taxpayer relocates from an academic business incubator facil-
53 ity partnered with an accredited post-secondary education institution
54 located within city, which provides space and business support services
55 to taxpayers, to another site, the credit provided in this subdivision
56 shall be allowed for all expenditures referenced in clause (C) of this

1 subparagraph paid or incurred in the two preceding calendar years that
2 the taxpayer was located in such an incubator facility for employees of
3 the taxpayer who also relocate from said incubator facility to such city
4 site and are employed and primarily located by the taxpayer in city.
5 Such expenditures in the two preceding years shall be added to the
6 amounts otherwise qualifying for the credit provided by this subdivision
7 that were paid or incurred in the calendar year that the taxpayer relo-
8 cates from such a facility. Such expenditures shall include expenses
9 paid for an eligible employee who is a full-time, full-year employee of
10 said taxpayer during the calendar year that the taxpayer relocated from
11 an incubator facility notwithstanding (i) that such employee was
12 employed full or part-time as an officer, staff-person or paid intern of
13 the taxpayer when such taxpayer was located at such incubator facility
14 or (ii) that such employee was not continuously employed when such
15 taxpayer was located at the incubator facility during the one hundred
16 eighty day period referred to in clause (C) of this subparagraph,
17 provided such employee received wages or equivalent income for at least
18 seven hundred fifty hours during any twenty-four month period when the
19 taxpayer was located at the incubator facility. Such expenditures shall
20 include payments made to such employee after the taxpayer has relocated
21 from the incubator facility for qualified expenditures if such payments
22 are made to reimburse an employee for expenditures paid by the employee
23 during such two preceding years. The credit provided under this para-
24 graph shall be allowed in any taxable year that the taxpayer qualifies
25 as an eligible taxpayer.

26 (E) For purposes of this subdivision the term "academic year" shall
27 mean the annual period of sessions of a post-secondary college or
28 university.

29 (F) For the purposes of this subdivision the term "academic incubator
30 facility" shall mean a facility providing low-cost space, technical
31 assistance, support services and educational opportunities, including
32 but not limited to central services provided by the manager of the
33 facility to the tenants of the facility, to an entity located in city.
34 Such entity's primary activity must be in biotechnologies, and such
35 entity must be in the formative stage of development. The academic incu-
36 bator facility and the entity must act in partnership with an accredited
37 post-secondary college or university located in city. An academic incu-
38 bator facility's mission shall be to promote job creation, entrepreneur-
39 ship, technology transfer, and provide support services to incubator
40 tenants, including, but not limited to, business planning, management
41 assistance, financial-packaging, linkages to financing services, and
42 coordinating with other sources of assistance.

43 (6) An eligible taxpayer may claim credits under this subdivision for
44 three consecutive years. In no case shall the credit allowed by this
45 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
46 calendar year for eligible expenditures made during such calendar year.

47 (7) The credit allowed under this subdivision for any taxable year
48 shall not reduce the tax due for such year to less than the amount
49 prescribed in clause four of subparagraph (a) of paragraph E of subdivi-
50 sion one of this section. Provided, however, if the amount of credit
51 allowed under this subdivision for any taxable year reduces the tax to
52 such amount, any amount of credit not deductible in such taxable year
53 shall be treated as an overpayment of tax to be credited or refunded in
54 accordance with the provisions of section 11-677 of this chapter;
55 provided, however, that notwithstanding the provisions of section 11-679
56 of this chapter, no interest shall be paid thereon.

1 (8) The credit allowed under this subdivision shall only be allowed
2 for taxable years beginning on or after January first, two thousand ten
3 and before January first, two thousand nineteen.

4 (b) (1) The percentage of the credit allowed to a taxpayer under this
5 subdivision in any calendar year shall be:

6 (A) If the average number of individuals employed full time by a
7 taxpayer in the city during the calendar year that ends with or within
8 the taxable year for which the credit is claimed is at least one hundred
9 five percent of the taxpayer's base year employment, one hundred
10 percent, except that in no case shall the credit allowed under this
11 clause exceed two hundred fifty thousand dollars per calendar year.
12 Provided, however, the increase in base year employment shall not apply
13 to a taxpayer allowed a credit under this subdivision that was, (i)
14 located outside of the city, (ii) not doing business, or (iii) did not
15 have any employees, in the year preceding the first year that the credit
16 is claimed. Any such taxpayer shall be eligible for one hundred percent
17 of the credit for the first calendar year that ends with or within the
18 taxable year for which the credit is claimed, provided that such taxpay-
19 er locates in the city, begins doing business in the city or hires
20 employees in the city during such calendar year and is otherwise eligi-
21 ble for the credit pursuant to the provisions of this subdivision.

22 (B) If the average number of individuals employed full time by a
23 taxpayer in the city during the calendar year that ends with or within
24 the taxable year for which the credit is claimed is less than one
25 hundred five percent of the taxpayer's base year employment, fifty
26 percent, except that in no case shall the credit allowed under this
27 clause exceed one hundred twenty-five thousand dollars per calendar
28 year. In the case of an entity located in city receiving space and busi-
29 ness support services by an academic incubator facility, if the average
30 number of individuals employed full time by such entity in the city
31 during the calendar year in which the credit allowed under this subdivi-
32 sion is claimed is less than one hundred five percent of the taxpayer's
33 base year employment, the credit shall be zero.

34 (2) For the purposes of this subdivision, "base year employment" means
35 the average number of individuals employed full-time by the taxpayer in
36 the city in the year preceding the first calendar year that ends with or
37 within the taxable year for which the credit is claimed.

38 (3) For the purposes of this subdivision, average number of individ-
39 uals employed full-time shall be computed by adding the number of such
40 individuals employed by the taxpayer at the end of each quarter during
41 each calendar year or other applicable period and dividing the sum so
42 obtained by the number of such quarters occurring within such calendar
43 year or other applicable period.

44 (4) Notwithstanding anything contained in this section to the contra-
45 ry, the credit provided by this subdivision shall be allowed against the
46 taxes authorized by this chapter for the taxable year after reduction by
47 all other credits permitted by this chapter.

48 22. Beer production credit. (a) A taxpayer subject to tax under this
49 subchapter, that is registered as a distributor under article eighteen
50 of the tax law, and that produces sixty million or fewer gallons of beer
51 in this state in the taxable year, shall be allowed a credit against the
52 tax imposed by this subchapter in the amount specified in paragraph (b)
53 of this subdivision. Provided, however, that no credit shall be allowed
54 for any beer produced in excess of fifteen million five hundred thousand
55 gallons in the taxable year. Notwithstanding anything in this title to
56 the contrary, if a partnership is allowed a credit under subdivision (p)

1 of section 11-503 of this title, a taxpayer that is a partner in such
2 partnership shall not be allowed a credit under this subdivision for any
3 taxable year that includes the last day of the taxable year for which
4 the partnership is allowed such credit.

5 (b) The amount of the credit per taxpayer per taxable year for each
6 gallon of beer produced in the city of New York on or after January
7 first, two thousand seventeen shall be determined as follows:

8 (1) for the first five hundred thousand gallons of beer produced in
9 the city of New York in the taxable year, the credit shall equal twelve
10 cents per gallon; and

11 (2) for each gallon of beer produced in the city of New York in the
12 taxable year in excess of five hundred thousand gallons, the credit
13 shall equal three and eighty-six one-hundredths cents per gallon. In no
14 event shall the credit allowed under this subdivision for any taxable
15 year reduce the tax due for such year to less than the amount prescribed
16 in clause four of subparagraph (a) of paragraph E of subdivision one of
17 this section. However, if the amount of credit allowed under this subdivi-
18 sion for any taxable year reduces the tax to such amount, any amount
19 of credit thus not deductible in such taxable year shall be treated as
20 an overpayment of tax to be credited or refunded in accordance with the
21 provisions of section 11-677 of this chapter; provided, however, that
22 notwithstanding the provisions of section 11-679 of this chapter, no
23 interest shall be paid thereon.

24 23. Credit for the provision of child care. In addition to any other
25 credit allowed under this section, a taxpayer whose application for a
26 credit authorized by section 11-144 of this title has been approved by
27 the department of finance shall be allowed a credit against the tax
28 imposed by this chapter. The amount of the credit shall be determined as
29 provided in such section. To the extent the amount of the credit allowed
30 by this subdivision exceeds the amount of tax due pursuant to this
31 subchapter, as calculated without such credit, such excess amount shall
32 be treated as an overpayment of tax to be credited or refunded in
33 accordance with the provisions of section 11-677 of this chapter,
34 provided, however, that notwithstanding the requirements of section
35 11-679 of this chapter to the contrary, no interest shall be paid there-
36 on.

37 § 11-605 Reports. 1. Every corporation having an officer, agent or
38 representative within the city, shall annually on or before March
39 fifteenth, transmit to the commissioner of finance a report in a form
40 prescribed by the commissioner, except that a corporation which reports
41 on the basis of a fiscal year shall transmit its report within two and
42 one-half months after the close of its fiscal year, setting forth such
43 information as the commissioner of finance may prescribe and every
44 taxpayer which ceases to do business in the city or to be subject to the
45 tax imposed by this subchapter shall transmit to the commissioner of
46 finance a report on the date of such cessation or at such other time as
47 the commissioner may require covering each year or period for which no
48 report was theretofore filed. Every taxpayer shall also transmit such
49 other reports and such facts and information as the commissioner of
50 finance may require in the administration of this subchapter. The
51 commissioner of finance may grant a reasonable extension of time for
52 filing reports whenever good cause exists.

53 With respect to taxable years ending prior to December thirty-first,
54 nineteen hundred sixty-six, the returns required to be made and filed
55 pursuant to this section shall be made and filed on or before the
56 fifteenth day of the third month following the close of such taxable

1 year or September eleventh, nineteen hundred sixty-six, whichever is
2 later.

3 An automatic extension of six months for the filing of its annual
4 report shall be allowed any taxpayer if, within the time prescribed by
5 either of the preceding paragraphs, whichever is applicable, such
6 taxpayer files with the commissioner of finance an application for
7 extension in such form as the commissioner may prescribe by regulation
8 and pays on or before the date of such filing the amount properly esti-
9 mated as its tax.

10 2. Every report shall have annexed thereto a certification by the
11 president, vice-president, treasurer, assistant treasurer, chief
12 accounting officer or another officer of the taxpayer duly authorized so
13 to act to the effect that the statements contained therein are true. In
14 the case of an association, within the meaning of paragraph three of
15 section (a) of section seventy-seven hundred one of the internal revenue
16 code, a publicly-traded partnership treated as a corporation for
17 purposes of the internal revenue code pursuant to section seventy-seven
18 hundred four thereof and any business conducted by a trustee or trustees
19 wherein interest or ownership is evidenced by certificates or other
20 written instruments, such certification shall be made by any person duly
21 authorized so to act on behalf of such association, publicly-traded
22 partnership or business. The fact that an individual's name is signed on
23 a certification of the report shall be prima facie evidence that such
24 individual is authorized to sign and certify the report on behalf of the
25 corporation. Blank forms of reports shall be furnished by the commis-
26 sioner of finance, on application, but failure to secure such a blank
27 shall not release any corporation from the obligation of making any
28 report required by this subchapter.

29 2-a. The commissioner of finance may prescribe regulations and
30 instructions requiring returns of information to be made and filed in
31 conjunction with the reports required to be filed pursuant to this
32 section, relating to payments made to shareholders owning, directly or
33 indirectly, individually or in the aggregate, more than fifty percent of
34 the issued capital stock of the taxpayer, where such payments are treat-
35 ed as payments of interest in the computation of entire net income
36 reported on such reports.

37 3. If the amount of taxable income, alternative minimum taxable income
38 or other basis of tax for any year of any taxpayer, or of any sharehold-
39 er of any taxpayer which has elected to be taxed under subchapter s of
40 chapter one of the internal revenue code or of any shareholder of any
41 taxpayer with respect to which an election has been made to be treated
42 as a qualified subchapter s subsidiary under paragraph three of
43 subsection (b) of section thirteen hundred sixty-one of the internal
44 revenue code, as returned to the United States treasury department or
45 the New York state commissioner of taxation and finance is changed or
46 corrected by the commissioner of internal revenue or other officer of
47 the United States or the New York state commissioner of taxation and
48 finance or other competent authority, or where a renegotiation of a
49 contract or subcontract with the United States or the state of New York
50 results in a change in taxable income, alternative minimum taxable
51 income or other basis of tax, or where a recovery of a war loss results
52 in a computation or recomputation of any tax imposed by the United
53 States or the state of New York, or if a taxpayer or such shareholder of
54 a taxpayer, pursuant to subsection (d) of section sixty-two hundred
55 thirteen of the internal revenue code, executes a notice of waiver of
56 the restrictions provided in subsection (a) of said section, or if a

1 taxpayer, or such shareholder of a taxpayer, pursuant to subsection (f)
2 of section one thousand eighty-one of the tax law, executes a notice of
3 waiver of the restrictions provided in subsection (c) of said section,
4 such taxpayer shall report such changed or corrected taxable income,
5 alternative minimum taxable income or other basis of tax, or the results
6 of such renegotiation, or such computation, or recomputation, or such
7 execution of such notice of waiver and the changes or corrections of the
8 taxpayer's federal or New York state taxable income, alternative minimum
9 taxable income or other basis of tax on which it is based, within ninety
10 days, or one hundred twenty days, in the case of a taxpayer making a
11 combined report under this subchapter for such year, after such
12 execution or the final determination of such change or correction or
13 renegotiation, or such computation, or recomputation, or as required by
14 the commissioner of finance, and shall concede the accuracy of such
15 determination or state wherein it is erroneous. The allowance of a
16 tentative carryback adjustment based upon a net operating loss carryback
17 or net capital loss carryback pursuant to section sixty-four hundred
18 eleven of the internal revenue code shall be treated as a final determi-
19 nation for purposes of this subdivision. Any taxpayer filing an amended
20 return with such department shall also file within ninety days thereaft-
21 er an amended report with the commissioner of finance.

22 4. (a) Any taxpayer which owns or controls either directly or indi-
23 rectly substantially all the capital stock of one or more other corpo-
24 rations, or substantially all the capital stock of which is owned or
25 controlled either directly or indirectly by one or more other corpo-
26 rations or by interests which own or control either directly or indi-
27 rectly substantially all the capital stock of one or more other corpo-
28 rations, hereinafter referred to in this paragraph as "related
29 corporations", shall make a combined report covering any related corpo-
30 rations if there are substantial intercorporate transactions among the
31 related corporations, regardless of the transfer price for such inter-
32 corporate transactions. It is not necessary that there be substantial
33 intercorporate transactions between any one corporation and every other
34 related corporation. It is necessary, however, that there be substantial
35 intercorporate transactions between the taxpayer and a related corpo-
36 ration or, collectively, a group of such related corporations. The
37 report shall set forth such information as the commissioner of finance
38 may require.

39 In determining whether there are substantial intercorporate trans-
40 actions, the commissioner shall consider and evaluate all activities and
41 transactions of the taxpayer and its related corporations. Activities
42 and transactions that will be considered include, but are not limited
43 to: manufacturing, acquiring goods or property, or performing services,
44 for related corporations; selling goods acquired from related corpo-
45 rations; financing sales of related corporations; performing related
46 customer services using common facilities and employees for related
47 corporations; incurring expenses that benefit, directly or indirectly,
48 one or more related corporations; and transferring assets, including
49 such assets as accounts receivable, patents or trademarks from one or
50 more related corporations.

51 (1) No taxpayer may be permitted to make a report on a combined basis
52 covering any such other corporations where such taxpayer or any such
53 other corporation allocates in accordance with clause (A) of subpara-
54 graph six of paragraph (a) of subdivision three of section 11-604 of
55 this subchapter and such taxpayer or any such other corporation does not
56 so allocate.

1 (2) No taxpayer may be permitted to make a report on a combined basis
2 covering any such other corporations where such taxpayer or any such
3 other corporation allocates in accordance with subparagraph seven of
4 paragraph (a) of subdivision three of section 11-604 of this subchapter
5 and such taxpayer or any such other corporation does not so allocate.

6 (3) Except as provided in the first undesignated paragraph of this
7 subdivision, no combined report covering any corporation not a taxpayer
8 shall be required unless the commissioner of finance deems such a report
9 necessary, because of inter-company transactions or some agreement,
10 understanding, arrangement or transaction referred to in subdivision
11 five of this section, in order properly to reflect the tax liability
12 under this subchapter.

13 (4) A corporation organized under the laws of a country other than the
14 United States shall not be required or permitted to make a report on a
15 combined basis.

16 (5)(i) For purposes of this subparagraph, the term "closest control-
17 ling stockholder" means the corporation that indirectly owns or controls
18 over fifty percent of the voting stock of a captive REIT or captive RIC,
19 is subject to tax under this subchapter or otherwise required to be
20 included in a combined report under this subchapter, and is the fewest
21 tiers of corporations away in the ownership structure from the captive
22 REIT or captive RIC. The commissioner is authorized to prescribe by
23 regulation or published guidance the criteria for determining the clos-
24 est controlling stockholder.

25 (ii) A captive REIT or a captive RIC must be included in a combined
26 report with the corporation that directly owns or controls over fifty
27 percent of the voting stock of the captive REIT or captive RIC if that
28 corporation is subject to tax or required to be included in a combined
29 report under this subchapter.

30 (iii) If over fifty percent of the voting stock of a captive REIT or
31 captive RIC is not directly owned or controlled by a corporation that is
32 subject to tax or required to be included in a combined report under
33 this subchapter, then the captive REIT or captive RIC must be included
34 in a combined report with the corporation that is the closest control-
35 ling stockholder of the captive REIT or captive RIC. If the closest
36 controlling stockholder of the captive REIT or captive RIC is subject to
37 tax or otherwise required to be included in a combined report under this
38 subchapter, then the captive REIT or captive RIC must be included in a
39 combined report under this subchapter.

40 (iv) If the corporation that directly owns or controls the voting
41 stock of the captive REIT or captive RIC is described in subparagraph
42 one, two or four of this paragraph as a corporation not permitted to
43 make a combined report, then the provisions in clause (iii) of this
44 subparagraph must be applied to determine the corporation in whose
45 combined report the captive REIT or captive RIC should be included. If,
46 under clause (iii) of this subparagraph, the corporation that is the
47 closest controlling stockholder of the captive REIT or captive RIC is
48 described in subparagraph one, two or four of this paragraph as a corpo-
49 ration not permitted to make a combined report, then that corporation is
50 deemed to not be in the ownership structure of the captive REIT or
51 captive RIC, and the closest controlling stockholder will be determined
52 without regard to that corporation.

53 (v) If a captive REIT owns the stock of a qualified REIT subsidiary,
54 as defined in paragraph two of subsection (i) of section eight hundred
55 fifty-six of the internal revenue code, then the qualified REIT subsidi-
56 ary must be included in a combined report with the captive REIT.

1 (vi) If a captive REIT or a captive RIC is required under this subpar-
2 agraph to be included in a combined report with another corporation, and
3 that other corporation is also required to be included in a combined
4 report with another related corporation or corporations under this para-
5 graph, then the captive REIT or the captive RIC must be included in that
6 combined report with those corporations.

7 (vii) If a captive REIT or a captive RIC is not required to be
8 included in a combined report with another corporation under clause (ii)
9 or (iii) of this subparagraph, or in a combined return under the
10 provisions of subparagraph (v) of paragraph two of subdivision (f) of
11 section 11-646 of this chapter, then the captive REIT or captive RIC is
12 subject to the opening provisions of this paragraph and the provisions
13 of subparagraph three of this paragraph. The captive REIT or captive RIC
14 must be included in a combined report under this subchapter with another
15 corporation if either the substantial intercorporate transactions
16 requirement in the opening provisions of this paragraph or the inter-
17 company transactions or agreement, understanding, arrangement or trans-
18 action requirement of subparagraph three of this paragraph is satisfied
19 and more than fifty percent of the voting stock of the captive REIT or
20 the captive RIC and substantially all of the capital stock of that other
21 corporation are owned and controlled, directly or indirectly, by the
22 same corporation.

23 (b)(1)(i) In the case of a combined report the tax shall be measured
24 by the combined entire net income or combined capital of all the corpo-
25 rations included in the report, including any captive REIT or captive
26 RIC; provided, however, in no event shall the tax measured by combined
27 capital exceed the limitation provided for in paragraph F of subdivision
28 one of section 11-604 of this subchapter.

29 (ii) In the case of a captive REIT or captive RIC required under this
30 subdivision to be included in a combined report, entire net income must
31 be computed as required under subdivision seven, in the case of a
32 captive REIT, or subdivision eight, in the case of a captive RIC, of
33 section 11-603 of this chapter. However, the deduction under the inter-
34 nal revenue code for dividends paid by the captive REIT or captive RIC
35 to any member of the affiliated group that includes the corporation that
36 directly or indirectly owns over fifty percent of the voting stock of
37 the captive REIT or captive RIC shall not be allowed for taxable years
38 beginning on or after January first, two thousand nine. The term "affil-
39 iated group" means "affiliated group" as defined in section fifteen
40 hundred four of the internal revenue code, but without regard to the
41 exceptions provided for in subsection (b) of that section.

42 (2) In computing combined entire net income intercorporate dividends
43 shall be eliminated, in computing combined business and investment capi-
44 tal intercorporate stock holdings and intercorporate bills, notes and
45 accounts receivable and payable and other intercorporate indebtedness
46 shall be eliminated and in computing combined subsidiary capital inter-
47 corporate stockholdings shall be eliminated.

48 5. In case it shall appear to the commissioner of finance that any
49 agreement, understanding or arrangement exists between the taxpayer and
50 any other corporation or any person or firm, whereby the activity, busi-
51 ness, income or capital of the taxpayer within the city is improperly or
52 inaccurately reflected, the commissioner of finance is authorized and
53 empowered, in its discretion and in such manner as it may determine, to
54 adjust items of income, deductions and capital, and to eliminate assets
55 in computing any allocation percentage provided only that any income
56 directly traceable thereto be also excluded from entire net income, so

1 as equitably to determine the tax. Where (a) any taxpayer conducts its
2 activity or business under any agreement, arrangement or understanding
3 in such manner as either directly or indirectly to benefit its members
4 or stockholders, or any of them, or any person or persons directly or
5 indirectly interested in such activity or business, by entering into any
6 transaction at more or less than a fair price which, but for such agree-
7 ment, arrangement or understanding, might have been paid or received
8 therefor, or (b) any taxpayer, a substantial portion of whose capital
9 stock is owned either directly or indirectly by another corporation,
10 enters into any transaction with such other corporation on such terms as
11 to create an improper loss or net income, the commissioner of finance
12 may include in the entire net income of the taxpayer the fair profits,
13 which, but for such agreement, arrangement or understanding, the taxpay-
14 er might have derived from such transaction.

15 6. An action may be brought at any time by the corporation counsel at
16 the instance of the commissioner of finance to compel the filing of
17 reports due under this subchapter.

18 7. Reports shall be preserved for five years, and thereafter until the
19 commissioner of finance orders them to be destroyed.

20 8. Where the state tax commission changes or corrects a taxpayer's
21 sales and compensating use tax liability with respect to the purchase or
22 use of items for which a sales or compensating use tax credit against
23 the tax imposed by this chapter was claimed, the taxpayer shall report
24 such change or correction to the commissioner of finance within ninety
25 days of the final determination of such change or correction, or as
26 required by the commissioner of finance, and shall concede the accuracy
27 of such determination or state wherein it is erroneous. Any taxpayer
28 filing an amended return or report relating to the purchase or use of
29 such items shall also file within ninety days thereafter a copy of such
30 amended return or report with the commissioner of finance.

31 § 11-606 Payment and lien of tax. 1. To the extent the tax imposed by
32 section 11-603 of this subchapter shall not have been previously paid
33 pursuant to section 11-608 of this subchapter,

34 (a) such tax, or the balance thereof, shall be payable to the commis-
35 sioner of finance in full at the time the report is required to be
36 filed, and

37 (b) such tax, or the balance thereof, imposed on any taxpayer which
38 ceases to do business in the city or to be subject to the tax imposed by
39 this subchapter shall be payable to the commissioner of finance at the
40 time the report is required to be filed; all other taxes of any such
41 taxpayer, which pursuant to the provisions of this section would other-
42 wise be payable subsequent to the time such report is required to be
43 filed, shall nevertheless be payable at such time.

44 If the taxpayer, within the time prescribed by section 11-605 of this
45 subchapter, shall have applied for an automatic extension of time to
46 file its annual report and shall have paid to the commissioner of
47 finance on or before the date such application is filed an amount prop-
48 erly estimated as provided by said section, the only amount payable in
49 addition to the tax shall be interest at the underpayment rate set by
50 the commissioner of finance pursuant to section 11-687 of this chapter,
51 or, if no rate is set, at the rate of seven and one-half percent per
52 annum upon the amount by which the tax, or the portion thereof payable
53 on or before the date the report was required to be filed, exceeds the
54 amount so paid. For purposes of this paragraph:

55 (1) an amount so paid shall be deemed properly estimated if it is
56 either: (A) not less than ninety percent of the tax as finally deter-

1 mined, computed without regard to any credit allowable under subdivision
2 eleven of section 11-604 of this subchapter, or (B) not less than the
3 tax shown, computed without regard to any credit allowable under subdivi-
4 sion eleven of section 11-604 of this subchapter, on the taxpayer's
5 report for the preceding taxable year, if such preceding year was a
6 taxable year of twelve months; and

7 (2) the time when a report is required to be filed shall be determined
8 without regard to any extension of time for filing such report.

9 2. The commissioner of finance may grant a reasonable extension of
10 time for payment of any tax imposed by this subchapter under such condi-
11 tions as it deems just and proper.

12 3. Subdivision one of this section shall apply to a taxpayer which has
13 a right to a credit pursuant to subdivision eleven of section 11-604 of
14 this subchapter, except that the tax, or balance thereof, payable to the
15 commissioner of finance in full pursuant to subdivision one of this
16 section, at the time the report is required to be filed, shall be calcu-
17 lated and paid at such time as if the credit provided for in subdivision
18 eleven of section 11-604 of this subchapter were not allowed.

19 § 11-607 Declaration of estimated tax. 1. Every taxpayer subject to
20 the tax imposed by section 11-603 of this subchapter shall make a decla-
21 ration of its estimated tax for the current privilege period, containing
22 such information as the commissioner of finance may prescribe by regu-
23 lations or instructions, if such estimated tax can reasonably be
24 expected to exceed one thousand dollars.

25 2. The term "estimated tax" means the amount which a taxpayer esti-
26 mates to be the tax imposed by section 11-603 of this subchapter for the
27 current privilege period, less the amount which it estimates to be the
28 sum of any credits allowable against the tax other than the credit
29 allowable under subdivision eleven of section 11-604 of this subchapter.

30 3. In the case of a taxpayer which reports on the basis of a calendar
31 year, a declaration of estimated tax shall be filed on or before June
32 fifteenth of the current privilege period, except that if the require-
33 ments of subdivision one are first met:

34 (a) after May thirty-first and before September first of such
35 current privilege period, the declaration shall be filed on or before
36 September fifteenth, or

37 (b) after August thirty-first and before December first of such
38 current privilege period, the declaration shall be filed on or before
39 December fifteenth.

40 4. A taxpayer may amend a declaration under regulations of the
41 commissioner of finance.

42 5. If, on or before February fifteenth of the succeeding year in the
43 case of a taxpayer which reports on the basis of a calendar year, a
44 taxpayer files its report for the year for which the declaration is
45 required, and pays therewith the balance, if any, of the full amount
46 of the tax shown to be due on the report,

47 (a) such report shall be considered as its declaration if no decla-
48 ration is required to be filed during the calendar or fiscal year for
49 which the tax was imposed, but is otherwise required to be filed on or
50 before December fifteenth pursuant to subdivision three of this
51 section, and

52 (b) such report shall be considered as the amendment permitted by
53 subdivision four of this section to be filed on or before December
54 fifteenth if the tax shown on the report is greater than the estimated
55 tax shown on a declaration previously made.

1 6. This section shall apply to privilege periods of twelve months
2 other than a calendar year by the substitution of the months of such
3 fiscal year for the corresponding months specified in this section.

4 7. If the privilege period for which a tax is imposed by section
5 11-603 of this subchapter is less than twelve months, every taxpayer
6 required to make a declaration of estimated tax for such privilege
7 period shall make such a declaration in accordance with regulations of
8 the commissioner of finance.

9 8. The commissioner of finance may grant a reasonable extension of
10 time, not to exceed three months, for the filing of any declaration
11 required pursuant to this section, on such terms and conditions as it
12 may require.

13 § 11-608 Payments on account of estimated tax. 1. Every taxpayer
14 subject to the tax imposed by section 11-603 of this subchapter shall
15 pay with the report required to be filed for the preceding privilege
16 period, if any, or with an application for extension of the time and
17 filing such report, an amount equal to twenty-five per centum of the
18 preceding year's tax, computed without regard to the credit provided for
19 in subdivision twelve of section 11-604 of this subchapter, if such
20 preceding year's tax exceeded one thousand dollars.

21 2. The estimated tax with respect to which a declaration for such
22 privilege period is required shall be paid, in the case of a taxpayer
23 which reports on the basis of a calendar year, as follows:

24 (a) If the declaration is filed on or before June fifteenth, the esti-
25 mated tax shown thereon, after applying thereto the amount, if any, paid
26 during the same privilege period pursuant to subdivision one of this
27 section, shall be paid in three equal installments. One of such
28 installments shall be paid at the time of the filing of the declaration,
29 one shall be paid on the following September fifteenth, and one on the
30 following December fifteenth.

31 (b) If the declaration is filed after June fifteenth and not after
32 September fifteenth of such privilege period, and is not required to be
33 filed on or before June fifteenth of such period, the estimated tax
34 shown on such declaration, after applying thereto the amount, if any,
35 paid during the same privilege period pursuant to subdivision one of
36 this section, shall be paid in two equal installments. One of such
37 installments shall be paid at the time of the filing of the declaration
38 and one shall be paid on the following December fifteenth.

39 (c) If the declaration is filed after September fifteenth of such
40 privilege period, and is not required to be filed on or before September
41 fifteenth of such privilege period, the estimated tax shown on such
42 declaration, after applying thereto the amount, if any, paid in respect
43 to such privilege period pursuant to subdivision one of this section,
44 shall be paid in full at the time of the filing of the declaration.

45 (d) If the declaration is filed after the time prescribed therefor, or
46 after the expiration of any extension of time therefor, paragraphs (b)
47 and (c) of this subdivision shall not apply, and there shall be paid at
48 the time of such filing all installments of estimated tax payable at or
49 before such time, and the remaining installments shall be paid at the
50 times at which, and in the amounts in which, they would have been paya-
51 ble if the declaration had been filed when due.

52 3. If any amendment of a declaration is filed, the remaining install-
53 ments, if any, shall be ratably increased or decreased, as the case may
54 be, to reflect any increase or decrease in the estimated tax by reason
55 of such amendment, and if any amendment is made after September

1 fifteenth of the privilege period, any increase in the estimated tax by
2 reason thereof shall be paid at the time of making such amendment.

3 4. Any amount paid shall be applied after payment as a first install-
4 ment against the estimated tax of the taxpayer for the current privilege
5 period shown on the declaration required to be filed pursuant to section
6 11-607 of this subchapter or, if no declaration of estimated tax is
7 required to be filed by the taxpayer to such section, any such amount
8 shall be considered a payment on account of the tax shown on the report
9 required to be filed by the taxpayer for such privilege period.

10 5. Notwithstanding the provisions of section 11-679 of this chapter or
11 of section three-a of the general municipal law, if an amount paid
12 pursuant to subdivision one of this section exceeds the tax shown on the
13 report required to be filed by the taxpayer for the privilege period
14 during which the amount was paid, interest shall be allowed and paid on
15 the amount by which the amount so paid pursuant to such subdivision
16 exceeds such tax, at the overpayment rate set by the commissioner of
17 finance pursuant to section 11-687 of this chapter, or, if no rate is
18 set, at the rate of four percent per annum from the date of payment of
19 the amount so paid pursuant to such subdivision to the fifteenth day of
20 the third month following the close of the privilege period, provided,
21 however, that no interest shall be allowed or paid under this subdivi-
22 sion if the amount thereof is less than one dollar or if such interest
23 becomes payable solely because of a carryback of a net operating loss in
24 a subsequent privilege period.

25 6. As used in this section, "the preceding year's tax" means the tax
26 imposed upon the taxpayer by section 11-603 of this subchapter for the
27 preceding calendar or fiscal year, or, for purposes of computing the
28 first installment of estimated tax when an application has been filed
29 for extension of the time for filing the report required to be filed for
30 such preceding calendar or fiscal year, the amount properly estimated
31 pursuant to section 11-607 of this subchapter as the tax imposed upon
32 the taxpayer for such calendar or fiscal year.

33 7. This section shall apply to a privilege period of less than twelve
34 months in accordance with regulations of the commissioner of finance.

35 8. The provisions of this section shall apply to privilege periods of
36 twelve months other than a calendar year by the substitution of the
37 months of such fiscal year for the corresponding months specified in
38 such provisions.

39 9. The commissioner of finance may grant a reasonable extension of
40 time, not to exceed six months, for payment of any installment of esti-
41 mated tax required pursuant to this section, on such terms and condi-
42 tions as the commissioner may require including the furnishing of a bond
43 or other security by the taxpayer in an amount not exceeding twice the
44 amount for which any extension of time for payment is granted, provided
45 however that interest at the underpayment rate set by the commissioner
46 of finance pursuant to section 11-687 of this chapter, or, if no rate is
47 set, at the rate of seven and one-half percent per annum for the period
48 of the extension shall be charged and collected on the amount for which
49 any extension of time for payment is granted under this subdivision.

50 10. A taxpayer may elect to pay any installment of estimated tax prior
51 to the date prescribed in this section for payment thereof.

52 11. The portion of an overpayment attributable to a credit allowable
53 pursuant to subdivision eleven of section 11-604 of this subchapter may
54 not be credited against any payment due under this section.

55 § 11-609 Collection of taxes. Every foreign corporation, other than
56 a moneyed corporation, subject to the provisions of this subchapter,

1 except a corporation having authority to do business by virtue of
2 section thirteen hundred five of the business corporation law, shall
3 file in the department of state a certificate of designation in its
4 corporate name, signed and acknowledged by its president or a vice-pre-
5 sident or its secretary or treasurer, under its corporate seal, desig-
6 nating the secretary of state as its agent upon whom process in any
7 action provided for by this subchapter may be served within this state,
8 and setting forth an address to which the secretary of state shall mail
9 a copy of any such process against the corporation which may be served
10 upon the secretary of state. In case any such corporation shall have
11 failed to file such certificate of designation, it shall be deemed to
12 have designated the secretary of state as its agent upon whom such proc-
13 ess against it may be served; and until a certificate of designation
14 shall have been filed, the corporation shall be deemed to have directed
15 the secretary of state to mail copies of process served upon him or her
16 to the corporation at its last known office address within or without
17 the state. When a certificate of designation has been filed by such
18 corporation the secretary of state shall mail copies of process there-
19 after served upon the secretary of state to the address set forth in
20 such certificate. Any such corporation, from time to time, may change
21 the address to which the secretary of state is directed to mail copies
22 of process, by filing a certificate to that effect executed, signed and
23 acknowledged in like manner as a certificate of designation as provided
24 in this section. Service of process upon any such corporation or upon
25 any corporation having authority to do business by virtue of section
26 thirteen hundred five of the business corporation law, in any action
27 commenced at any time pursuant to the provisions of this subchapter, may
28 be made by either: (a) personally delivering to and leaving with the
29 secretary of state, a deputy secretary of state or with any person
30 authorized by the secretary of state to receive such service duplicate
31 copies thereof at the office of the department of state in the city of
32 Albany, in which event the secretary of state shall forthwith send by
33 registered mail, return receipt requested, one of such copies to the
34 corporation at the address designated by it or at its last known office
35 address within or without the state, or (b) personally delivering to and
36 leaving with the secretary of state, a deputy secretary of state or with
37 any person authorized by the secretary of state to receive such service,
38 a copy thereof at the office of the department of state in the city of
39 Albany and by delivering a copy thereof to, and leaving such copy with,
40 the president, vice-president, secretary, assistant secretary, treasur-
41 er, assistant treasurer, or cashier of such corporation, or the officer
42 performing corresponding functions under another name, or a director or
43 managing agent of such corporation, personally without the state. Proof
44 of such personal service without the state shall be filed with the clerk
45 of the court in which the action is pending within thirty days after
46 such service, and such service shall be complete ten days after proof
47 thereof is filed.

48 § 11-610 Limitations of time. The provisions of the civil practice
49 law and rules relative to the limitation of time enforcing a civil reme-
50 dy shall not apply to any proceeding or action taken to levy, appraise,
51 assess, determine or enforce the collection of any tax or penalty
52 prescribed by this subchapter, provided, however, that as to real estate
53 in the hands of persons who are owners thereof who would be purchasers
54 in good faith but for such tax or penalty and as to the lien on real
55 estate of mortgages held by persons who would be holders thereof in good
56 faith but for such tax or penalty, all such taxes and penalties shall

1 cease to be a lien on such real estate as against such purchasers or
2 holders after the expiration of ten years from the date such taxes
3 became due and payable. The limitations provided for in this section
4 shall not apply to any transfer from a corporation to a person or corpo-
5 ration with intent to avoid payment of any taxes, or where with like
6 intent the transfer is made to a grantee corporation, or any subsequent
7 grantee corporation, controlled by such grantor or which has any commu-
8 nity of interest with it, either through stock ownership or otherwise.

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SUBCHAPTER 3
FINANCIAL CORPORATION TAX
PART 1
TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL
CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

14 § 11-611 Definitions. When used in this part:

15 1. The term "financial corporation" means every corporation doing a
16 banking business as defined in this section, other than a national bank-
17 ing association, a trust company all of the capital stock of which is
18 owned by not less than twenty savings banks organized under a law of
19 this state, or a corporation taxable under subchapter two of this chap-
20 ter, and shall include the mortgage facilities corporation created by
21 chapter five hundred sixty-four of the laws of nineteen hundred fifty-
22 six and any corporation eighty percent or more of whose voting stock is
23 beneficially owned by a corporation or corporations subject to article
24 three or article three-a of the banking law or a national banking asso-
25 ciation or associations, provided the corporation whose voting stock is
26 so owned is principally engaged in business which might be lawfully
27 conducted by a corporation subject to article three of the banking law
28 or a national banking association.

29 2. The word "paid", for the purpose of the deductions and credits
30 under this part, means "paid or accrued" or "paid or incurred," and the
31 terms "paid or incurred" and "paid or accrued" shall be construed
32 according to the method of accounting upon the basis of which the net
33 income is computed, under this part. The term "received," for the
34 purpose of the computation of net income under this part means "received
35 or accrued" and the term "received or accrued" shall be construed
36 according to the method of accounting upon the basis of which the net
37 income is computed under this part.

38 3. The word "dividend" means any distribution made by a corporation to
39 its shareholders or members, out of its earnings or profits, whether in
40 cash, or in property other than stock of the corporation.

41 4. The words "doing a banking business" means doing such business as a
42 corporation may be created to do under articles three, five, five-a, and
43 six of the banking law, or doing any business which a corporation is
44 authorized by such articles to do.

45 5. The words "foreign banker doing a banking business" in the city,
46 include every foreign corporation doing a banking business in the city,
47 except a national banking association.

48 6. The words "savings and loan association" mean every corporation
49 doing such business as a corporation may be created to do under article
50 ten of the banking law, including every federal savings and loan associ-
51 ation organized under authority of the United States.

52 § 11-612 Tax based on net income; imposition; minimum tax; new incor-
53 porations; dissolution; consolidations; mergers, etc.

54 1. For the privilege of doing business in the city:

1 (a) Every bank and savings and loan association organized under the
2 authority of this state;

3 (b) Every trust company incorporated, organized or formed under, by or
4 pursuant to a law of the state, other than a trust company all of the
5 stock of which is owned by not less than twenty savings banks organized
6 under a law of the state, and every domestic corporation authorized to
7 do a trust company's business solely or in connection with any other
8 business, under a general or special law of the state;

9 (c) Every other domestic financial corporation;

10 (d) Every incorporated foreign banker doing a banking business and
11 every other foreign financial corporation; and

12 (e) Every federal savings and loan association located within the
13 city, shall annually pay a tax at the rate of four and one-half per
14 centum except that for the years nineteen hundred seventy-one and those
15 following, the rate shall be five and sixty-three one hundredths per
16 centum, to be computed as provided in this part, upon the basis of its
17 net income for each calendar year, beginning with the calendar year
18 nineteen hundred sixty-six, next preceding the date when such tax
19 becomes due, if the taxpayer is required to file a declaration of esti-
20 mated tax and to make payments on account of such estimated tax as
21 provided by section 11-636 of this subchapter, upon the basis of its net
22 income for the calendar year with respect to which such declaration is
23 required to be filed.

24 2. Every such corporation for the privilege of doing business in the
25 city and every federal savings and loan association located in the city
26 shall be subject to a minimum tax of not less than ten dollars and not
27 less than one mill except that for the years nineteen hundred seventy-
28 one and those following such minimum tax shall be not less than twelve
29 and one-half dollars and not less than one and one-quarter mills upon
30 each dollar of such a part of its issued capital stock on the last day
31 of the calendar year preceding that in which such tax becomes due, at
32 its face value, as the gross income of such corporation derived from
33 business carried on within the city during such calendar year, bears to
34 its gross income derived from all business, both within and without the
35 city, during said year, but if such a corporation has stock without par
36 value, such stock shall be taken at its actual or market value, and not
37 less than five dollars per share, as may be determined by the commis-
38 sioner of finance; except that a savings bank and savings and loan asso-
39 ciation shall be subject to a minimum tax of not less than an amount
40 equal to two per centum of the amount of interest or dividends credited
41 by it to depositors or shareholders during the calendar year preceding
42 that in which such tax becomes due except that for the years nineteen
43 hundred seventy-one and those following such minimum tax shall be not
44 less than twelve and one-half dollars and not less than an amount equal
45 to two and one-half per centum of the amount of interest or dividends
46 credited by it to depositors or shareholders during the calendar year
47 preceding that in which such tax becomes due, provided that, in deter-
48 mining such amount each interest or dividend credit to a depositor or
49 shareholder shall be deemed to be the interest or dividend actually
50 credited or the interest or dividend which would have been credited if
51 it had been computed and credited at the rate of two per centum per
52 annum whichever is less and except also that in the case of a trust
53 company or savings bank incorporated in the calendar year preceding that
54 in which its first return under this part shall be due and after the
55 thirtieth day of June in such year, the minimum tax, computed as in this
56 subdivision provided, shall be reduced one-twelfth for each month, or

1 major portion thereof, subsequent to said thirtieth day of June during
2 which such trust company or savings bank did not exercise the privilege
3 of doing business in the city.

4 3. For the privilege of doing business in the city, every such domes-
5 tic corporation, except trust companies and savings banks, shall be
6 subject to a tax for the calendar year in which its organization certifi-
7 cate is filed, and, for the privilege of doing business in the city,
8 every such foreign corporation shall be subject to a tax for the calen-
9 dar year in which it first does business in the city, and, every federal
10 savings and loan association located within the city shall be subject to
11 a tax for the calendar year in which it first becomes located within the
12 city, computed in the same manner and at the same rate as the minimum
13 tax under subdivision two of this section, except that the income form-
14 ing the basis for proration shall be the income for such calendar year,
15 and the issued capital stock shall be taken as of the last day of such
16 calendar year; provided, however, that the tax so computed shall be
17 reduced one-twelfth for each month, or major portion thereof, in such
18 calendar year, during which such corporation was not doing business in
19 the city, or, if a federal savings and loan association, was not located
20 in the city, and in no event shall the tax be less than ten dollars
21 except that for the year nineteen hundred seventy-one and those follow-
22 ing, in no event shall the tax be less than twelve and one-half dollars.

23 4. For the privilege of doing business in the city, every such trust
24 company and savings bank which shall become incorporated between the
25 thirty-first day of December and the succeeding first day of July, shall
26 be subject to a tax for such period, computed in the same manner and at
27 the same rate as the minimum tax under subdivision two of this section,
28 except that the income forming the basis for proration shall be the
29 income for such period; and the issued capital stock, or interest cred-
30 ited to depositors of a savings bank, shall be taken as of the last day
31 of such period; provided, however, that the tax so computed shall be
32 reduced one-half and an additional one-twelfth for each month, or major
33 portion thereof, in such period, during which such trust company or
34 savings bank was not doing business in the city, and in no event shall
35 the tax be less than ten dollars except that for the year nineteen
36 hundred seventy-one and those following, in no event shall the tax be
37 less than twelve and one-half dollars.

38 5. For the privilege of doing business in the city, every such corpo-
39 ration, except trust companies and savings banks, which shall be
40 dissolved between the thirty-first day of December and the succeeding
41 second day of September, and shall not become merged or consolidated
42 with another corporation taxable under this part and, every such foreign
43 corporation which shall cease to do business in the city during the same
44 period, and every federal savings and loan association which ceases to
45 be located in the city during the same period, and shall not become
46 merged or consolidated with another corporation taxable under this part,
47 shall pay a tax for the period from the thirty-first day of December up
48 to the time of dissolution, ceasing to do business in the city, or ceas-
49 ing to be located in the city, as the case may be, equal to that which
50 would have been payable had it not been dissolved, ceased to do business
51 in the city, or ceased to be located in the city, except that such tax
52 shall be reduced one-third and an additional one-twelfth for each month,
53 or major portion thereof, prior to such succeeding second day of Septem-
54 ber, during which such corporation was not doing business in the city,
55 or was not located in the city, and in no event shall the tax be less
56 than ten dollars except that for the year nineteen hundred seventy-one

1 and those following, in no event shall the tax be less than twelve and
2 one-half dollars. If such dissolution or cessation occurs between the
3 fifteenth day of March and the second day of September, and if such
4 corporation shall have filed its return on or before the fifteenth day
5 of March as required by section 11-633 of this subchapter, it may file a
6 claim for refund as provided in section 11-678 of this chapter, showing
7 any reduction in tax to which it may be entitled as provided in the
8 preceding sentence; and if it shall be made to appear that the amount of
9 tax due is less than the amount as computed on the basis of the original
10 return, the commissioner of finance shall adjust the computation of tax
11 accordingly. If the amount of tax as so adjusted shall be less than the
12 amount theretofore paid, the excess shall be refunded by the commission-
13 er of finance as provided in subdivision one of section 11-677 of this
14 chapter.

15 6. Every such trust company and savings bank, which shall be
16 dissolved, and shall not become merged or consolidated with another
17 corporation taxable under this part, shall, if dissolution takes place
18 between the thirtieth day of June and the succeeding first day of Janu-
19 ary, be subject to a tax, for that part of such period in which it had
20 been doing business, computed in the same manner and at the same rate as
21 the minimum tax under subdivision two of this section, except that the
22 income forming the basis for proration shall be the income for the
23 calendar year in which such dissolution occurs; and the issued capital
24 stock, or interest credited to depositors of a savings bank, shall be
25 taken as of the date of dissolution; provided, however, that the tax so
26 computed shall be reduced one-half and an additional one-twelfth for
27 each month, or major portion thereof, between the date of dissolution
28 and the succeeding first day of January. If dissolution occurs between
29 the thirty-first day of December and the succeeding sixteenth day of
30 March, such trust company and savings bank shall be subject to the same
31 tax that would have been due from it on or before the fifteenth day of
32 March had it not been dissolved, except that such tax shall be reduced
33 one-twelfth for each month, or major portion thereof, from the date of
34 dissolution to the succeeding first day of July, and shall be for the
35 period beginning on the preceding first day of July and ending on the
36 date of dissolution. In no event shall the tax under this subdivision
37 be less than ten dollars except that for the year nineteen hundred
38 seventy-one and those following, in no event shall the tax under this
39 subdivision be less than twelve and one-half dollars.

40 7. In the case of a consolidation or merger of taxpayers, or in case a
41 national bank taxable under part two of this subchapter shall be consol-
42 idated or merged with a taxpayer under this part, or in case of a series
43 of such transactions, there shall be added to the net income of the
44 taxpayer resulting from such consolidations or mergers the net income of
45 the taxpayers which are consolidated or merged for the period for which
46 the taxpayer resulting from such consolidation or merger is required to
47 render any return under this part, and if such resulting taxpayer is a
48 savings bank or savings and loan association, there shall be added to
49 the interest or dividends credited by it to depositors or shareholders
50 the amount of interest or dividends credited to depositors or sharehold-
51 ers during such period by the taxpayers which are consolidated or
52 merged, except that net income, interest or dividends shall not be
53 included if they have already been used as the basis for a tax under
54 this part, and the tax payable on filing such return shall be based upon
55 the entire net income reported therein or upon the entire amount of
56 interest or dividends so reported, as the case may be. The acquisition

1 by a taxpayer, directly or indirectly, of the assets or franchises of
2 another taxpayer or national bank shall be deemed a merger for the
3 purposes of this section.

4 8. The tax imposed by this part shall be for the calendar year next
5 preceding the year in which it becomes due; except that with respect to
6 corporations subject to a tax imposed under subdivision three, four,
7 five or six of this section, the tax shall be for the period therein
8 specified, and except that with respect to corporations required to file
9 a declaration of estimated tax and to make payments on account of such
10 estimated tax as provided by section 11-636 of this subchapter, all
11 payments of tax within a calendar year, whether computed on the basis of
12 net income for the current calendar year or on the basis of net income
13 for the preceding calendar year, shall be for the calendar year in which
14 the payments are required to be made.

15 9. In the event that it shall be finally determined by a court of
16 competent jurisdiction that the taxes imposed on national banking asso-
17 ciations by part two of this subchapter are unconstitutional or invalid
18 for the reason that they are not in conformity with the provisions of
19 section fifty-two hundred nineteen of the United States revised stat-
20 utes, then, in lieu of the taxes imposed by the provisions of this part,
21 every corporation that otherwise would have been subject to tax under
22 this part shall be subject to the tax imposed under subchapter two as of
23 July thirteenth, nineteen hundred sixty-six, and all of the provisions
24 of subchapter two, unless clearly inappropriate, shall be applicable
25 except subdivision four of section 11-603 of this chapter; and, in such
26 event, any payments made, reports or returns filed or any act of the
27 commissioner of finance or of a taxpayer purportedly under this subchap-
28 ter shall be treated as though made, filed or done pursuant to subchap-
29 ter two.

30 10. Cross reference. For years for which tax is imposed, see section
31 11-613 of this part.

32 § 11-613 Years for which imposed. 1. The tax imposed by section
33 11-612 of this part is imposed for each calendar year included within
34 the period beginning January first, nineteen hundred sixty-six and
35 ending December thirty-first, nineteen hundred seventy-two.

36 2. Cross reference. For tax imposed for years or periods subsequent to
37 nineteen hundred seventy-two, see part four of this subchapter.

38 § 11-614 Ascertainment of gain or loss. 1. For the purpose of ascer-
39 taining the gain derived or loss sustained from the sale or other dispo-
40 sition of property, real, personal or mixed, the basis shall be the cost
41 thereof, or the inventoried value if the inventory is made in accordance
42 with section 11-617 of this part.

43 2. Notwithstanding subdivision one of this section, with respect to
44 gain derived from the sale or other disposition of any property acquired
45 prior to January first, nineteen hundred sixty-six, except stock in
46 trade of the taxpayer or other property of a kind which would properly
47 be included in the inventory of the taxpayer if on hand at the close of
48 the taxable year, or property held by the taxpayer primarily for sale to
49 customers in the ordinary course of its trade or business, and accounts
50 or notes receivable acquired in the ordinary course of trade or business
51 from the sale of such stock in trade or property, or for services
52 rendered, net income shall not include:

53 (a) That portion of the gain included in determining net income pursu-
54 ant to subdivision one of this section with respect to each such proper-
55 ty, which exceeds:

1 (b) The amount of gain that would be included in determining net
2 income pursuant to subdivision one of this section with respect to each
3 such property if the basis of such property on the date of sale or other
4 disposition were equal to its fair market value on January first, nine-
5 teen hundred sixty-six, plus or minus all adjustments to basis made with
6 respect to each such property in computing net income for periods on or
7 after January first, nineteen hundred sixty-six provided that the total
8 adjustment to net income provided by this subdivision shall not exceed
9 the amount of the taxpayer's net gain from the sale or other disposition
10 of all such property, as determined pursuant to subdivision one of this
11 section.

12 3. In the case of any bond, with respect to which a deduction for
13 amortizable bond premium is allowable under subdivision nine of section
14 11-621 of this part, the basis for determining gain or loss shall be
15 reduced by the total amount of such deductions so allowable.

16 § 11-615 Exchange of property. Upon the sale or exchange of property
17 the entire amount of the gain or loss, determined under section 11-614
18 of this part, shall be recognized, except as provided in this section:

19 1. No gain or loss shall be recognized if common stock in a corpo-
20 ration is exchanged solely for common stock in the same corporation, or
21 if preferred stock in a corporation is exchanged solely for preferred
22 stock in the same corporation;

23 2. No gain or loss shall be recognized if stock or securities in a
24 corporation, a party to a reorganization are, in pursuance of the plan
25 or reorganization, exchanged solely for stock or securities in such
26 corporation or in another corporation a party to such reorganization;

27 3. No gain or loss shall be recognized if a taxpayer, a party to a
28 reorganization, exchanges property, in pursuance of the plan of reorgan-
29 ization, solely for stock or securities in another corporation a party
30 to such reorganization; and

31 4. No gain or loss shall be recognized if property is transferred to a
32 corporation by a taxpayer solely in exchange for stock or securities in
33 such corporation, and immediately after the exchange such taxpayer is in
34 control of the corporation; but in the case of an exchange by a taxpayer
35 and one or more other corporations or persons this subdivision shall
36 apply only if the amount of the stock and securities received by each is
37 substantially in proportion to its interest in the property prior to the
38 exchange.

39 5. If property, as a result of its destruction in whole or in part,
40 theft or seizure, or an exercise of the power of requisition or condem-
41 nation, or the threat of imminence thereof, is compulsorily or involun-
42 tarily converted into property similar or related in service or use to
43 the property so converted, or into money which is forthwith in good
44 faith, under regulations prescribed by the commissioner of finance,
45 expended in the acquisition of other property similar or related in
46 service or use to the property so converted, or in the acquisition of
47 control of a corporation owning such other property, or in the estab-
48 lishment of a replacement fund, no gain or loss shall be recognized. If
49 any part of the money is not so expended, the gain, if any, shall be
50 recognized, but in an amount not in excess of the money which is not so
51 expended.

52 6. If there is distributed, in pursuance of a plan of reorganization,
53 to a taxpayer shareholder in a corporation a party to the reorganiza-
54 tion, stock or securities in such corporation or in another corporation
55 a party to the reorganization, without the surrender by such taxpayer
56 shareholder of stock or securities in such a corporation, no gain to the

1 distributee from the receipt of such stock or securities shall be recog-
2 nized.

3 7. If an exchange would be within the provisions of subdivision one,
4 two, or four of this section if it were not for the fact that the prop-
5 erty received in exchange consists not only of property permitted by
6 such subdivision to be received without the recognition of gain, but
7 also of other property or money, then the gain, if any, to the recipient
8 shall be recognized, but in an amount not in excess of the sum of such
9 money and the fair market value of such other property.

10 8. If an exchange would be within the provisions of subdivision three
11 of this section if it were not for the fact that the property received
12 in exchange consists not only of stock or securities permitted by such
13 subdivision to be received without the recognition of gain, but also of
14 other property or money, then:

15 (a) If the taxpayer receiving such other property or money distributes
16 it in pursuance of the plan of reorganization, no gain to the taxpayer
17 shall be recognized from the exchange, but

18 (b) If the taxpayer receiving such other property or money does not
19 distribute it in pursuance of the plan of reorganization, the gain, if
20 any, to the taxpayer shall be recognized, but in an amount not in excess
21 of the sum of such money and the fair market value of such other prop-
22 erty so received, which is not so distributed.

23 9. If an exchange would be within the provisions of subdivision one,
24 two, three, or four of this section if it were not for the fact that the
25 property received in exchange consists not only of property permitted by
26 such subdivision to be received without the recognition of gain or loss,
27 but also of other property or money, then no loss from the exchange
28 shall be recognized.

29 10. As used in this section:

30 (a) The term "reorganization" means (i) a merger or consolidation,
31 including the acquisition by one corporation of at least a majority of
32 the voting stock and at least a majority of the total number of shares
33 of all other classes of stock of another corporation, or substantially
34 all the properties of another corporation, or (ii) a transfer by a
35 corporation of all or a part of its assets to another corporation if
36 immediately after the transfer the transferor or its stockholders or
37 both are in control of the corporation to which the assets are trans-
38 ferred, or (iii) a recapitalization, or (iv) a mere change in identity,
39 form or place of organization, however effected;

40 (b) The term "a party to a reorganization" includes a corporation
41 resulting from a reorganization and includes both corporations in the
42 case of an acquisition by one corporation of at least a majority of the
43 voting stock and at least a majority of the total number of shares of
44 all other classes of stock of another corporation; and

45 (c) The term "control" means the ownership of at least eighty per
46 centum of the voting stock and at least eighty per centum of the total
47 number of shares of all other classes of stock of the corporation.

48 11. No gain or loss shall be recognized upon the receipt by a taxpayer
49 of property distributed in complete liquidation of a corporation. For
50 the purposes of this subdivision a distribution shall be considered to
51 be in complete liquidation only if:

52 (a) the taxpayer receiving such property was, on the date of the
53 adoption of the plan of liquidation, and has continued to be at all
54 times until the receipt of the property, the owner of stock, in such
55 corporation, possessing at least eighty per centum of the total combined
56 voting power of all classes of stock entitled to vote and the owner of

1 at least eighty per centum of the total number of shares of all other
2 classes of stock, except non-voting stock which is limited and preferred
3 as to dividends, and was at no time on or after the date of the adoption
4 of the plan of liquidation and until the receipt of the property the
5 owner of a greater percentage of any class of stock than the percentage
6 of such class owned at the time of the receipt of the property; and
7 either:

8 (b) the distribution is by such corporation in complete cancellation
9 or redemption of all its stock, and the transfer of all the property
10 occurs within the base year; in such case the adoption by the sharehold-
11 ers of the resolution under which is authorized the distribution of all
12 the assets of the corporation in complete cancellation or redemption of
13 all its stock, shall be considered an adoption of a plan of liquidation,
14 even though no time for the completion of the transfer of the property
15 is specified on such resolution; or

16 (c) such distribution is one of a series of distributions by such
17 corporation in complete cancellation or redemption of all its stock in
18 accordance with a plan of liquidation under which the transfer of all
19 the property under the liquidation is to be completed within three years
20 from the close of the year during which is made the first of the series
21 of distributions under the plan, except that if such transfer is not
22 completed within such period, or if the taxpayer does not continue qual-
23 ified under paragraph (a) of this subdivision until the completion of
24 such transfer, no distribution under the plan shall be considered a
25 distribution in complete liquidation.

26 If such transfer of all the property does not occur within the year,
27 the commissioner of finance may require of the taxpayer such bond, or
28 waiver of the statute of limitations on assessment and collection, or
29 both, as the commissioner may deem necessary to insure, if the transfer
30 of the property is not completed within such three year period, or if
31 the taxpayer does not continue qualified under paragraph (a) of this
32 subdivision until the completion of such transfer, the assessment and
33 collection of all taxes then imposed under this part for such year or
34 subsequent years, to the extent attributable to property so received. A
35 distribution otherwise constituting a distribution in complete liqui-
36 dation within the meaning of this paragraph shall not be considered as
37 not constituting such a distribution merely because it does not consti-
38 tute a distribution or liquidation within the meaning of the corporate
39 law under which the distribution is made; and for the purposes of this
40 paragraph a transfer of property of such corporation to the taxpayer
41 shall not be considered as not constituting a distribution, or one of a
42 series of distributions, in complete cancellation or redemption of all
43 the stock of such corporation, merely because the carrying out of the
44 plan involves: (1) the transfer under the plan to the taxpayer by such
45 corporation of property, not attributable to shares owned by the taxpay-
46 er, upon an exchange described in subdivision three of this section, and
47 (2) the complete cancellation or redemption under the plan, as a result
48 of exchanges described in subdivision two of this section, of the shares
49 not owned by the taxpayers.

50 § 11-616 Exchange of property when no gain or loss is realized. When
51 property is exchanged for other property and no gain or loss is realized
52 under the provisions of the preceding section, the property received
53 shall be treated as taking the place of the property exchanged therefor.
54 Where no gain or loss is realized under the provisions of subdivision
55 eleven of section 11-615 of this part, the basis of the property
56 received shall be the same as it would be in the hands of the transferor

1 determined in accordance with the provisions of section 11-614 of this
2 part.

3 § 11-617 Inventory. Whenever in the opinion of the commissioner of
4 finance the use of inventories is necessary in order clearly to deter-
5 mine the income of any taxpayer, inventory shall be taken by such
6 taxpayer upon such basis as the commissioner of finance may prescribe,
7 conforming as nearly as may be to the best accounting practice in the
8 banking business most clearly reflecting the income.

9 § 11-618 Net income defined. The term "net income" means the gross
10 income of a taxpayer less the deductions allowed by this part.

11 § 11-619 Computation of net income. The net income shall be computed
12 in accordance with the method of accounting regularly employed in keep-
13 ing the books of such taxpayer; but if no such method of accounting has
14 been so employed, or if the method employed does not clearly reflect the
15 income, the computation shall be made upon such basis and in such manner
16 as in the opinion of the commissioner of finance does clearly reflect
17 the income. In determining net income, war losses, taxation of property
18 recovered, and basis of property shall be treated in substantially the
19 same manner as such losses, recoveries and basis are treated under the
20 applicable provisions of section thirteen hundred thirty-one of the
21 internal revenue code.

22 § 11-620 Gross income defined. 1. The term "gross income" includes
23 gains, profits and income derived from the business, of whatever kind
24 and in whatever form paid, including gains, profits or income from deal-
25 ings in property, whether real or personal, or gains, profits or income
26 received as compensation for services, as interest, rents, commissions,
27 brokerage or other fees, or otherwise in carrying on such business,
28 including all dividends received on stocks and all interest received
29 from federal, state, municipal or other bonds.

30 2. If the gross income of a taxpayer is derived from business carried
31 on both within and without the city, "gross income" means that propor-
32 tion thereof which is derived from business carried on within the city,
33 to be allocated and determined on the basis of separate accounting for
34 each office or branch or, at the election of the taxpayer, under rules
35 and regulations prescribed by the commissioner of finance.

36 3. "Gross income" of a savings bank shall include the amount received
37 by it in any taxable year as a distribution in liquidation of the mutual
38 savings bank fund.

39 § 11-621 Deductions. In computing net income there shall be allowed as
40 deductions:

41 1. All the ordinary and necessary expenses paid or incurred during the
42 year in carrying on business, including a reasonable allowance for sala-
43 ries or other compensation for personal services actually rendered, and
44 including rentals or other payments required to be made as a condition
45 to the continued use or possession for business purposes of property to
46 which the taxpayer has not taken or is not taking title or in which such
47 taxpayer has no equity.

48 2. All interest paid or accrued during the year on indebtedness.

49 3. Taxes, other than taxes on income or profits paid or accrued within
50 the year, imposed, first, by the authority of the United States, or of
51 any of its possessions, or, second, by the authority of any state, or
52 territory, or any county, school district, municipality, or other taxing
53 subdivisions of any state or territory, not including those assessed
54 against local benefits of a kind tending to increase the value of the
55 property assessed, or, third, by the authority of any foreign govern-
56 ment.

1 4. Losses sustained during the year and not compensated for by insur-
2 ance or otherwise, if incurred in business; unless in order to clearly
3 reflect the income the losses should in the opinion of the commissioner
4 of finance be accounted for as of a different period. No deduction shall
5 be allowed for any loss claimed to have been sustained in any sale or
6 other disposition of shares of stock or securities where it appears that
7 within thirty days before or after the date such sale or other disposi-
8 tion the taxpayer has acquired substantially identical property, and the
9 property so acquired is held by the taxpayer for any period after such
10 sale or other disposition, unless such claim is made with respect to a
11 transaction made in the ordinary course of business. If such acquisi-
12 tion is to the extent of part only of substantially identical property,
13 only a proportionate part of the loss shall be disallowed.

14 5. Debts ascertained to be worthless and charged off within the year;
15 or in the discretion of the commissioner of finance a reasonable addi-
16 tion to a reserve for bad debts. When satisfied that a debt is recovera-
17 ble only in part, the commissioner of finance may allow such debt to be
18 charged off in part.

19 6. A reasonable allowance for the exhaustion, wear and tear of proper-
20 ty used in business, including a reasonable allowance for obsolescence.
21 In the case of any such property acquired before January first, nineteen
22 hundred sixty-six, the amount of such deduction shall be equal to the
23 deduction properly taken for such property in reporting the tax due
24 pursuant to the former article nine-b of the tax law. With respect to
25 property such as described in subdivision twelve of this section, this
26 deduction may be computed and allowed as provided therein.

27 7. If the gross income be derived from business carried on within and
28 without the city, the deductions allowed by this section shall be allo-
29 cated and determined on the basis of separate accounting for each office
30 or branch or, at the election of the taxpayer, under rules and regu-
31 lations to be prescribed by the commissioner of finance.

32 8. In the case of any taxpayer who establishes or maintains a pension
33 trust to provide for the payment of reasonable pensions to its employ-
34 ees, there shall be allowed as a deduction, in addition to the contribu-
35 tions to such trust during the taxable year to cover the pension
36 liability accruing during the year, allowed as a deduction under subdivi-
37 sion one of this section, a reasonable amount transferred or paid into
38 such trust during the taxable year in excess of such contributions, but
39 only if such amount (a) has not theretofore been allowable as a
40 deduction, and (b) is apportioned in equal parts over a period of ten
41 consecutive years beginning with the year in which the transfer or
42 payment is made or, under regulations of the commissioner of finance,
43 covers not more than one-tenth of the total pension liability with
44 respect to services rendered prior to such taxable year; provided that
45 said deduction shall be allowable only with respect to a taxable year,
46 whether the year of the transfer or payment or a subsequent year, of the
47 taxpayer ending within or with a taxable year of the trust with respect
48 to which the trust, by reason of its purposes or activities, is exempt
49 from federal income tax.

50 9. The amount of the amortizable bond premium on a bond for the year
51 shall be allowed as a deduction as hereinafter provided. In computing
52 such deduction: (a) the amount of the bond premium shall be determined
53 with reference to the amount of the basis, for determining loss on sale
54 or exchange, of such bond, and with reference to the amount payable on
55 maturity or on earlier call date, with adjustments proper to reflect
56 unamortized bond premium with respect to the bond, for the period prior

1 to July thirteenth, nineteen hundred sixty-six with respect to the
2 taxpayer with respect to such bond, and (b) the amortizable bond premium
3 of the year shall be the amount of the bond premium attributable to such
4 year. Accordingly, such determination shall be made in accordance with
5 the method of amortizing bond premium regularly employed by the holder
6 of such bond, if such method is reasonable, and in all other cases in
7 accordance with regulations of the commissioner of finance prescribing
8 reasonable methods of amortizing bond premium. This subdivision shall
9 apply only if the taxpayer shall so elect, in accordance with regu-
10 lations of the commissioner of finance, and such election shall be made
11 separately with respect to (1) bonds, the interest of which is wholly
12 taxable, and (2) bonds, the interest of which is wholly or partially tax
13 exempt, for purposes of the income tax imposed by chapter one of the
14 internal revenue code. If such election is made with respect to any bond
15 of the taxpayer described in clauses one or two of this subdivision, it
16 shall also apply to all bonds in the same class held by the taxpayer at
17 the beginning of the first year to which the election applies and to all
18 such bonds thereafter acquired by it and shall be binding for all subse-
19 quent years with respect to all such bonds of the taxpayer, unless upon
20 the application by the taxpayer, the commissioner of finance permits the
21 taxpayer, subject to such conditions as the commissioner of finance
22 deems necessary, to revoke such election. As used in this subdivision
23 the term "bond" means any bond, debenture, note or certificate or other
24 evidence of indebtedness, issued by any corporation and bearing inter-
25 est, including any like obligation issued by a government or political
26 subdivision thereof, with interest coupons or in registered form, but
27 does not include any such obligation which constitutes stock in trade of
28 the taxpayer or any such obligation of a kind which would properly be
29 included in the inventory of the taxpayer if on hand at the close of the
30 year, or any such obligation held by the taxpayer primarily for sale to
31 customers in the ordinary course of its trade or business.

32 10. In the case of a savings bank and savings and loan association,
33 amounts paid or credited to depositors or holders of accounts as inter-
34 est or dividends on their deposits or withdrawable accounts, if such
35 amounts are withdrawable on demand subject only to customary notice of
36 intention to withdraw.

37 11. A savings bank and savings and loan association may deduct in any
38 taxable year the amount of the repayment of any loan or advance from the
39 mutual savings bank fund in computing its net income and the amount of
40 interest or dividends subject to the minimum tax under subdivision three
41 of section 11-612 of this part.

42 12. (a) At the election of the taxpayer there shall be deducted from
43 gross income, or if gross income is derived from business carried on
44 within and without this city, from the portion thereof allocated within
45 the city, depreciation with respect to any property such as described in
46 paragraph (b) of this subdivision, not exceeding twice the depreciation
47 allowed with respect to the same property for federal income tax
48 purposes.

49 (b) Such deduction shall be allowed only with respect to tangible
50 property which is depreciable pursuant to section one hundred sixty-sev-
51 en of the internal revenue code, having a situs in this city and used in
52 the taxpayer's business, (i) constructed, reconstructed or erected after
53 December thirty-first, nineteen hundred sixty-five, pursuant to a
54 contract which was on or before December thirty-first, nineteen hundred
55 sixty-seven, and at all times thereafter, binding on the taxpayer or,
56 property, the physical construction, reconstruction or erection of which

1 began on or before December thirty-first, nineteen hundred sixty-seven
2 or which began after such date pursuant to an order placed on or before
3 December thirty-first, nineteen hundred sixty-seven, and then only with
4 respect to that portion of the basis thereof which is properly attribut-
5 able to such construction, reconstruction or erection after December
6 thirty-first, nineteen hundred sixty-five, or (ii) acquired after Decem-
7 ber thirty-first, nineteen hundred sixty-five, pursuant to a contract
8 which was, on or before December thirty-first, nineteen hundred sixty-
9 seven, and at all times thereafter, binding on the taxpayer or pursuant
10 to an order placed on or before December thirty-first, nineteen hundred
11 sixty-seven, by purchase as defined in section one hundred seventy-nine
12 (d) of the internal revenue code, if the original use of such property
13 commenced with the taxpayer, commenced in this city and commenced after
14 December thirty-first, nineteen hundred sixty-five, or (iii) acquired,
15 constructed, reconstructed or erected subsequent to December thirty-
16 first, nineteen hundred sixty-seven, if such acquisition, construction,
17 reconstruction or erection is pursuant to a plan of the taxpayer which
18 was in existence December thirty-first, nineteen hundred sixty-seven and
19 not thereafter substantially modified, and such acquisition,
20 construction, reconstruction or erection would qualify under the rules
21 in paragraph four, five or six of subsection (h) of section forty-eight
22 of the internal revenue code provided all references in such paragraphs
23 four, five and six to the dates October nine, nineteen hundred sixty-six
24 and October ten, nineteen hundred sixty-six shall be read as December
25 thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed
26 a deduction under clause (i), (ii) or (iii) of this paragraph only if
27 the tangible property shall be delivered or the construction, recon-
28 struction or erection shall be completed on or before December thirty-
29 first, nineteen hundred sixty-nine, except in the case of tangible prop-
30 erty which is acquired, constructed, reconstructed or erected pursuant
31 to a contract which was, on or before December thirty-first, nineteen
32 hundred sixty-seven, and at all times thereafter, binding on the taxpay-
33 er. Provided, however, for any taxable year beginning on or after Janu-
34 ary first, nineteen hundred sixty-eight, a taxpayer shall not be allowed
35 a deduction under paragraph (a) of this subdivision with respect to
36 tangible personal property leased by it to any other person or corpo-
37 ration. Accordingly, any contract or agreement to lease or rent or for a
38 license to use such property shall be considered a lease. With respect
39 to property which the taxpayer uses itself for purposes other than leas-
40 ing for part of a taxable year and leases for a part of a taxable year,
41 the taxpayer shall be allowed a deduction under paragraph (a) of this
42 subdivision in proportion to the part of the year it uses such property.

43 (c) If the deduction allowable for any taxable year pursuant to this
44 subdivision exceeds the taxpayer's net income computed without the
45 allowance of such deduction and without the allowance of any deduction
46 pursuant to subdivision six of this section with references to the same
47 property, the excess may be carried over to the following taxable year
48 or years and may be deducted in computing net income for such year or
49 years.

50 (d) In any taxable year when property is sold or otherwise disposed
51 of, with respect to which a deduction has been allowed pursuant to this
52 subdivision, the gain or loss thereon shall be computed by adjusting the
53 basis of such property to reflect the deductions so allowed, and if the
54 taxpayer's gross income is derived from business carried on both within
55 and without the city, shall be allocated within the city. Provided,
56 however, that no loss shall be recognized for the purposes of this para-

1 graph with respect to a sale or other disposition of property to a
2 person whose acquisition thereof is not a purchase as defined in section
3 one hundred seventy-nine (d) of the internal revenue code.

4 § 11-622 Items not deductible. In computing net income no deduction
5 shall in any case be allowed in respect of:

6 (a) Any amount paid out for new buildings or for permanent improve-
7 ments or betterments made to increase the value of any property.

8 (b) Any amount expended in restoring property or in making good the
9 exhaustion thereof for which an allowance is or has been made.

10
11
12

PART 2
TAX ON NATIONAL BANKING ASSOCIATIONS
AND PRODUCTION CREDIT ASSOCIATIONS

13 § 11-623 Imposition of tax. 1. Pursuant to the authority conferred by
14 section fifty-two hundred nineteen of the United States revised statutes
15 and in conformity with the provisions contained in subdivision c of
16 clause one of such section, every national banking association organized
17 under authority of the United States and located within the city, shall
18 annually pay a tax, measured by its net income, to be computed, as
19 provided in this part, at the rate of four and one-half per centum
20 except that for the year nineteen hundred seventy-one and those follow-
21 ing the rate shall be five and sixty-three one hundredths per centum,
22 upon the basis of its net income for the calendar year next preceding
23 the date when such tax becomes due. Such tax shall be for the calendar
24 year next preceding the year in which it becomes due; except that with
25 respect to national banking associations required to file a declaration
26 of estimated tax and to make payments on account of such estimated tax
27 in accordance with the provisions of section 11-636 of this subchapter,
28 all payments of tax within a calendar year, whether computed on the
29 basis of net income for the current calendar year or on the basis of net
30 income for the preceding calendar year, shall be for the calendar year
31 in which the payments are required to be made. If, however, such a
32 national banking association shall be dissolved between the thirty-first
33 day of December and the succeeding second day of September, and shall
34 not become merged or consolidated with a corporation taxable under part
35 one of this subchapter, it shall pay a tax for the period from the thir-
36 ty-first day of December up to the time of dissolution equal to that
37 which would have been payable had it not been dissolved, except that
38 such tax shall be reduced by one-third and an additional one-twelfth for
39 each month, or major portion thereof, prior to such succeeding second
40 day of September, during which such corporation was so dissolved. If
41 such dissolution occurs between the fifteenth day of March and the
42 second day of September, and if such corporation shall have filed its
43 return on or before the fifteenth day of March as required by sections
44 11-630 and 11-633 of this subchapter, it may file a claim for refund as
45 provided in section 11-678 of this chapter, showing any reduction in tax
46 to which it may be entitled as provided by this section; and if it shall
47 be made to appear that the amount of tax due is less than the amount as
48 computed on the basis of the original return, the commissioner of
49 finance shall adjust the computation of tax accordingly. If the amount
50 of tax as so adjusted shall be less than the amount theretofore paid,
51 the excess shall be refunded by the commissioner of finance as provided
52 in subdivision one of section 11-677 of this chapter.

53 2. In the event that the taxes imposed by this part shall be finally
54 determined to be unconstitutional or invalid for the reason that they do

1 not conform with the provisions of section fifty-two hundred nineteen of
2 the United States revised statutes, then, in lieu of the taxes imposed
3 by the provisions of this part, every national banking association and
4 every production credit association that otherwise would have been
5 subject to tax under this part shall be subject to the tax imposed under
6 subchapter two as of July thirteenth, nineteen hundred sixty-six, and
7 all of the provisions of subchapter two, unless clearly inappropriate,
8 shall be applicable except subdivision four of section 11-603 of this
9 chapter; and, in such event, any payments made, reports or returns filed
10 or any act of the commissioner of finance or of a taxpayer purportedly
11 under this subchapter shall be treated as though made, filed or done
12 pursuant to subchapter two.

13 3. Cross reference. For years for which tax is imposed, see section
14 11-624 of this part.

15 § 11-624 Years for which imposed. 1. The tax imposed by section
16 11-623 of this part is imposed for each calendar year included within
17 the period beginning January first, nineteen hundred sixty-six and
18 ending December thirty-first, nineteen hundred seventy-two.

19 2. Cross reference. For tax imposed for years or periods subsequent to
20 nineteen hundred seventy-two, see part four of this subchapter.

21 § 11-625 Ascertainment of gain or loss; exchange of property. 1.
22 For the purpose of ascertaining the gain derived or loss sustained from
23 the sale or other disposition of property, real, personal or mixed, the
24 basis shall be the cost thereof, or the inventoried value if the inven-
25 tory is made in accordance with section 11-626 of this part.

26 2. Notwithstanding subdivision one of this section, with respect to
27 gain derived from the sale or other disposition of any property acquired
28 prior to January first, nineteen hundred sixty-six, except stock in
29 trade of the taxpayer or other property of a kind which would properly
30 be included in the inventory of the taxpayer if on hand at the close of
31 the taxable year, or property held by the taxpayer primarily for sale to
32 customers in the ordinary course of its trade or business and accounts
33 or notes receivable acquired in the ordinary course of trade or business
34 from the sale of such stock in trade or property, or for services
35 rendered, net income shall not include:

36 (a) That portion of the gain included in determining net income pursu-
37 ant to subdivision one of this section with respect to each such proper-
38 ty which exceeds:

39 (b) The amount of gain, if any, that would be included in determining
40 net income pursuant to subdivision one of this section with respect to
41 each such property if the basis of such property on the date of sale or
42 other disposition were equal to its fair market value on January first,
43 nineteen hundred sixty-six, plus or minus all adjustments to basis made
44 with respect to each such property in computing net income for periods
45 on or after January first, nineteen hundred sixty-six; provided that the
46 total adjustment to net income provided by this subdivision shall not
47 exceed the amount of the taxpayer's net gain from the sale or other
48 disposition of all such property, as determined pursuant to subdivision
49 one of this section.

50 3. Upon the sale or exchange of property the amount of the gain or
51 loss shall be determined in the manner prescribed by section 11-615 of
52 this subchapter and the basis of such property shall be determined in
53 the manner prescribed by section 11-616 of this subchapter.

54 4. In the case of any bond, with respect to which a deduction for
55 amortizable bond premium is allowable under paragraph (i) of subdivision
56 one of section 11-629 of this part, the basis for determining gain or

1 loss shall be reduced by the total amount of such deductions so allow-
2 able.

3 § 11-626 Inventory. Whenever in the opinion of the commissioner of
4 finance the use of inventories is necessary in order clearly to deter-
5 mine the income of any taxpayer, inventory shall be taken by such
6 taxpayer upon such basis as the commissioner of finance may prescribe,
7 conforming as nearly as may be to the best accounting practice in the
8 banking business and most clearly reflecting the income.

9 § 11-627 Net income defined; computation. The term "net income"
10 means the gross income of a taxpayer less the deductions allowed by this
11 part. The net income shall be computed in accordance with the method of
12 accounting regularly employed in keeping the books of such taxpayer; but
13 if no such method of accounting has been so employed, or if the method
14 employed does not clearly reflect the income, the computation shall be
15 made upon such basis and in such manner as in the opinion of the commis-
16 sioner of finance does clearly reflect the income. In determining net
17 income, war losses, taxation of property recovered, and basis of proper-
18 ty shall be treated in substantially the same manner as such losses,
19 recoveries and basis are treated under the applicable provisions of
20 section thirteen hundred thirty-one of the internal revenue code.

21 § 11-628 Gross income defined. 1. The term "gross income" includes
22 gains, profit and income derived from the business, of whatever kind and
23 in whatever form paid, including gains, profits or income from dealings
24 in property, whether real or personal, or gains, profits, or income
25 received as compensation for services, as interest, rents, commissions,
26 brokerage or other fees, or otherwise in carrying on such business,
27 including all dividends received on stocks and all interest received
28 from federal, state, municipal or other bonds.

29 2. If the gross income of such an association is derived from business
30 carried on both within and without the city, "gross income" means that
31 proportion thereof which is derived from business carried on within the
32 city, to be allocated and determined on the basis of separate accounting
33 for each office or branch or, at the election of the taxpayer, under
34 rules and regulations prescribed by the commissioner of finance.

35 § 11-629 Deductions. 1. In computing net income there shall be
36 allowed as deductions:

37 (a) All the ordinary and necessary expenses paid or incurred during
38 the year in carrying on business, including a reasonable allowance for
39 salaries or other compensation for personal services actually rendered,
40 and including rentals or other payments required to be made as a condi-
41 tion to the continued use or possession for business purposes of proper-
42 ty to which the taxpayer has not taken or is not taking title or in
43 which such taxpayer has no equity;

44 (b) All interest paid or accrued during the year on indebtedness;

45 (c) Taxes, other than taxes on income or profits paid or accrued with-
46 in the year, imposed, first, by the authority of the United States, or
47 of any of its possessions, or, second, by the authority of any state, or
48 territory, or any county, school district, municipality, or other taxing
49 subdivisions of any state or territory, not including those assessed
50 against local benefits of a kind tending to increase the value of the
51 property assessed, or, third, by the authority of any foreign govern-
52 ment;

53 (d) Losses sustained during the year and not compensated for by insur-
54 ance or otherwise, if incurred in business; unless in order to clearly
55 reflect the income the losses should in the opinion of the commissioner
56 of finance be accounted for as of a different period. No deduction

1 shall be allowed for any loss claimed to have been sustained in any sale
2 or other disposition of shares of stock or securities where it appears
3 that within thirty days before or after the date of such sale or other
4 disposition the taxpayer has acquired substantially identical property,
5 and the property so acquired is held by the taxpayer for any period
6 after such sale or other disposition, unless such claim is made with
7 respect to a transaction made in the ordinary course of business. If
8 such acquisition is to the extent of part only of substantially identi-
9 cal property, only a proportionate part of the loss shall be disallowed;

10 (e) Debts ascertained to be worthless and charged off within the year;
11 or in the discretion of the commissioner of finance a reasonable addi-
12 tion to a reserve for bad debts. When satisfied that a debt is recover-
13 able only in part, the commissioner of finance may allow such debt to be
14 charged off in part;

15 (f) A reasonable allowance for the exhaustion, wear and tear of prop-
16 erty used in business, including a reasonable allowance for obsoles-
17 cence. In the case of any such property acquired before January first,
18 nineteen hundred sixty-six, the amount of such deduction shall be equal
19 to the deduction properly taken for such property in reporting the tax
20 due. With respect to property such as described in paragraph (j) of
21 this subdivision, this deduction may be computed and allowed as provided
22 therein;

23 (g) If the gross income be derived from business carried on within and
24 without the city, the deductions allowed by this section shall be allo-
25 cated and determined on the basis of separate accounting for each office
26 or branch or, at the election of the taxpayer, under rules and regu-
27 lations to be prescribed by the commissioner of finance;

28 (h) In the case of any taxpayer, who establishes or maintains a
29 pension trust to provide for the payment of reasonable pensions to its
30 employees, there shall be allowed as a deduction, in addition to the
31 contributions to such trust during the taxable years, to cover the
32 pension liability accruing during the year, allowed as a deduction under
33 paragraph (a) of this subdivision, a reasonable amount transferred or
34 paid into such trust during the taxable year in excess of such contrib-
35 utions, but only if such amount: (1) has not theretofore been allowable
36 as a deduction, and (2) is apportioned in equal parts over a period of
37 ten consecutive years beginning with the year in which the transfer of
38 payment is made; provided that said deduction shall be allowable only
39 with respect to a taxable year, whether the year of the transfer or
40 payment or a subsequent year, of the taxpayer ending within or with a
41 taxable year of the trust with respect to which the trust, by reason of
42 its purposes or activities is exempt from federal income tax;

43 (i) The amount of the amortizable bond premium on a bond for the year
44 shall be allowed as a deduction as provided in this paragraph. In
45 computing such deduction, (a) the amount of the bond premium shall be
46 determined with reference to the amount of the basis, for determining
47 loss on sale or exchange, of such bond, and with reference to the amount
48 payable on maturity or on earlier call date, with adjustments proper to
49 reflect unamortized bond premium with respect to the bond, for the peri-
50 od prior to July thirteenth, nineteen hundred sixty-six with respect to
51 the taxpayer with respect to such bond, and (b) the amortizable bond
52 premium of the year shall be the amount of the bond premium attributable
53 to such year. Such determinations shall be made in accordance with the
54 method of amortizing bond premium regularly employed by the holder of
55 such bond, if such method is reasonable, and in all other cases in
56 accordance with regulations of the commissioner of finance prescribing

1 reasonable methods of amortizing bond premium. This paragraph shall
2 apply only if the taxpayer shall so elect, in accordance with regu-
3 lations of the commissioner of finance, and such election shall be made
4 separately with respect to: (1) bonds, the interest of which is wholly
5 taxable, and (2) bonds, the interest of which is wholly or partially tax
6 exempt, for purposes of the income tax imposed by chapter one of the
7 internal revenue code. If such election is made with respect to any bond
8 of the taxpayer described in clauses one or two of this subparagraph, it
9 shall also apply to all bonds in the same class held by the taxpayer at
10 the beginning of the first year to which the election applies and to all
11 such bonds thereafter acquired by it and shall be binding for all subse-
12 quent years with respect to all such bonds of the taxpayer, unless, upon
13 application by the taxpayer, the commissioner of finance permits the
14 taxpayer, subject to such conditions as the commissioner of finance
15 deems necessary, to revoke such election. As used in this paragraph,
16 the term "bond" means any bond, debenture, note, or certificate or other
17 evidence of indebtedness, issued by any corporation and bearing inter-
18 est, including any like obligation issued by a government or political
19 subdivision thereof, with interest coupons or in registered form, but
20 does not include any such obligation which constitutes stock in trade of
21 the taxpayer or any such obligation of a kind which would properly be
22 included in the inventory of the taxpayer if on hand at the close of the
23 year, or any such obligation held by the taxpayer primarily for sale to
24 customers in the ordinary course of its trade or business; and

25 (j) (1) At the election of the taxpayer there shall be deducted from
26 gross income, or if gross income is derived from business carried on
27 within and without this city, from the portion thereof allocated within
28 the city, depreciation with respect to any property such as described in
29 subparagraph two of this paragraph, not exceeding twice the depreciation
30 allowed with respect to the same property for federal income tax
31 purposes.

32 (2) Such deduction shall be allowed only with respect to tangible
33 property which is depreciable pursuant to section one hundred sixty-sev-
34 en of the internal revenue code, having a situs in this city and used in
35 the taxpayer's business, (i) constructed, reconstructed or erected after
36 December thirty-first, nineteen hundred sixty-five, pursuant to a
37 contract which was, on or before December thirty-first, nineteen hundred
38 sixty-seven, and at all times thereafter, binding on the taxpayer or
39 pursuant to an order placed on or before December thirty-first, nineteen
40 hundred sixty-seven, by purchase as defined in section one hundred
41 seventy-nine (d), of the internal revenue code, if the original use of
42 such property commenced with the taxpayer, commenced in this city and
43 commenced after December thirty-first, nineteen hundred sixty-five or
44 (ii) acquired, constructed, reconstructed, or erected subsequent to
45 December thirty-first, nineteen hundred sixty-seven, if such acquisi-
46 tion, construction, reconstruction or erection is pursuant to a plan of
47 the taxpayer which was in existence December thirty-first, nineteen
48 hundred sixty-seven and not thereafter substantially modified, and such
49 acquisition, construction, reconstruction or erection would qualify
50 under the rules in paragraph four, five or six of subsection (h) of
51 section forty-eight of the internal revenue code provided all references
52 in such paragraphs four, five and six to the dates October nine, nine-
53 teen hundred sixty-six, and October ten, nineteen hundred sixty-six,
54 shall read as December thirty-first, nineteen hundred sixty-seven. A
55 taxpayer shall be allowed a deduction under clause (i) or (ii) of this
56 subparagraph only if the tangible property shall be delivered or the

1 construction, reconstruction or erection shall be completed on or before
2 December thirty-first, nineteen hundred sixty-nine, except in the case
3 of tangible property which is acquired, constructed, reconstructed or
4 erected pursuant to a contract which was, on or before December thirty-
5 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
6 ing on the taxpayer. Provided, however, for any taxable year beginning
7 on or after January first, nineteen hundred sixty-eight, a taxpayer
8 shall not be allowed a deduction under paragraph (a) of this subdivision
9 with respect to tangible personal property leased by it to any other
10 person or corporation. Any such contract or agreement to lease or rent
11 or for a license to use such property shall be considered a lease. With
12 respect to property which the taxpayer uses itself for purposes other
13 than leasing for part of a taxable year and leases for a part of a taxa-
14 ble year, the taxpayer shall be allowed a deduction under paragraph (a)
15 of this subdivision in proportion to the part of the year it uses such
16 property.

17 (3) If the deduction allowable for any taxable year pursuant to this
18 subdivision exceeds the taxpayer's net income computed without the
19 allowance of such deduction and without the allowance of any deduction
20 pursuant to paragraph (f) of this subdivision with reference to the same
21 property, the excess may be carried over to the following taxable year
22 or years and may be deducted in computing net income for such year or
23 years.

24 (4) In any taxable year when property is sold or otherwise disposed
25 of, with respect to which a deduction has been allowed pursuant to this
26 paragraph, the gain or loss thereon shall be computed by adjusting the
27 basis of such property to reflect the deductions so allowed, and if the
28 taxpayer's gross income is derived from business carried on both within
29 and without the city, shall be allocated within the city. Provided,
30 however, that no loss shall be recognized for the purposes of this para-
31 graph with respect to a sale or other disposition of property to a
32 person whose acquisition thereof is not a purchase as defined in section
33 one hundred seventy-nine (d) of the internal revenue code.

34 2. In computing net income no deduction shall in any case be allowed
35 in respect of:

36 (a) Any amount paid out for new buildings or for permanent improve-
37 ments or betterments made to increase the value of any property.

38 (b) Any amount expended in restoring or in making good the exhaustion
39 thereof for which an allowance is or has been made.

40 § 11-630 Administration; procedure; provisions of law applicable.
41 For the purpose of carrying into effect the provisions of this part, and
42 except as otherwise provided in this part, income shall be computed,
43 gain or loss ascertained, deductions made, apportionments and allo-
44 cations determined, at the same time and subject to the same limitations
45 and conditions, in so far as practicable, as is provided by part one of
46 this subchapter in relation to the tax imposed by such part.

47 § 11-631 Tax on production credit associations. Pursuant to the
48 authority conferred by the federal farm credit act of nineteen hundred
49 thirty-three, every production credit association organized under the
50 authority of the United States and located within the city after the
51 stock held in it by the federal production credit corporation has been
52 retired shall annually pay a tax measured by its net income, which shall
53 be computed in the same manner as the tax imposed upon national banking
54 associations by section 11-623 of this part and shall be subject to the
55 provisions of sections 11-624 of this part to 11-630 of this part inclu-
56 sive.

1 § 11-632 Applicability of part three. 1. This part shall be applica-
2 ble only to the taxes imposed by parts one and two of this subchapter.
3 2. Cross reference. For years for which parts one and two of this
4 subchapter impose a tax, see sections 11-613 and 11-624 of this subchap-
5 ter.

6 PART 3
7 ADMINISTRATION FOR PARTS 1 AND 2

8 § 11-633 Taxpayer's returns. 1. Every taxpayer, on or before March
9 fifteenth of each year, beginning with the year nineteen hundred sixty-
10 seven and ending with the year nineteen hundred seventy-three, shall
11 make a return subscribed by the taxpayer and affirmed by the taxpayer to
12 be true under the penalties of perjury to the commissioner of finance,
13 for the calendar year next preceding, as to the business or that portion
14 of the business of such taxpayer the income from which is the basis of
15 taxation under part one or two of this subchapter, except that every
16 trust company and savings bank which shall become incorporated between
17 the thirty-first day of December and the succeeding first day of July,
18 shall make its return for such period on or before September first, and
19 every taxpayer, other than a trust company and savings bank, which shall
20 commence to do business in the city or become located in the city, shall
21 make its return for the calendar year in which it commences to do busi-
22 ness or becomes located, on or before the twentieth day of January of
23 the year succeeding such calendar year, and except that every taxpayer,
24 other than a trust company and savings bank, which shall be dissolved,
25 cease to do business in the city or cease to be located in the city,
26 between the thirty-first day of December and the succeeding sixteenth
27 day of March and shall not become merged or consolidated with another
28 corporation taxable under the same part, shall make its return for such
29 period on or before the date of such dissolution, or cessation of busi-
30 ness, and every trust company and savings bank which shall be dissolved,
31 and shall not become merged or consolidated with another corporation
32 taxable under the same part, shall make its return, for the period for
33 which it is taxable under subdivision six of section 11-612 of this
34 subchapter on or before the date of such dissolution. Such return shall
35 be in such form and contain such information as the commissioner of
36 finance may require for the purpose of making any computation or other-
37 wise performing its duty under parts one, two, and three of this
38 subchapter. Such return shall state specifically the items of gross
39 income derived from such business and the deductions allowed by the part
40 for which the return is filed, the net income which is the basis of the
41 tax, and the amount of tax due. The return shall be subscribed by the
42 president, vice-president, treasurer, assistant treasurer, chief
43 accounting officer or any other officer of the taxpayer duly authorized
44 so to act. The fact that an individual's name is signed on the return
45 shall be prima facie evidence that such individual is authorized to
46 subscribe and affirm the return on behalf of the corporation. Blank
47 forms of return shall be furnished by the commissioner of finance upon
48 application, but failure to secure the form shall not relieve any
49 taxpayer from the obligation of making any return herein required. An
50 automatic extension of three months for the filing of its annual return
51 shall be allowed for any taxpayer if, within the time prescribed under
52 this subdivision for the filing thereof, such taxpayer files with the
53 commissioner of finance an application for extension in such form as the
54 commissioner of finance may prescribe by regulation and pays on or

1 before the date of such filing the amount properly estimated as its tax.
2 The commissioner of finance may grant a reasonable extension of time for
3 filing a return, which may be in addition to any three-month automatic
4 extension allowed, whenever in the commissioner's judgment good cause
5 exists and shall keep a record of every such extension and the reason
6 therefor. No such extension or extensions shall aggregate more than
7 three months, exclusive of any automatic extension.

8 2. If the amount of taxable income for any year of any taxpayer as
9 returned to the United States treasury department or the New York state
10 tax department is changed or corrected by the commissioner of internal
11 revenue or other officer of the United States or the New York state tax
12 commission or other competent authority; or if a taxpayer, pursuant to
13 subsection (d) of section sixty-two hundred thirteen of the internal
14 revenue code, executes a notice of waiver of the restrictions provided
15 in subsection (a) of such section, or if a taxpayer, pursuant to subdivi-
16 sion (f) of section one thousand eighty-one of the tax law, executes a
17 notice of waiver of the restrictions provided in subdivision (c) of such
18 section, such taxpayer shall report such change or corrected taxable
19 income or such execution of such notice of waiver and the changes or
20 corrections of such taxpayer's federal or New York state taxable income
21 on which it is based, within ninety days after such execution or the
22 final determination of such change or correction, or as required by the
23 commissioner of finance, and shall concede the accuracy of such determi-
24 nation or state wherein it is erroneous. Any taxpayer filing an amended
25 return with such department shall also file within ninety days thereaft-
26 er an amended return with the commissioner of finance which shall
27 contain such information as it shall require.

28 § 11-634 Consolidated returns. Corporations which are affiliated
29 may, if authorized, and shall, if required, by the commissioner of
30 finance, under regulations prescribed by the commissioner of finance,
31 make a consolidated return for the purpose of parts one, two and three
32 of this subchapter. The commissioner of finance may, in his or her
33 discretion, authorize bank holding companies as defined in article
34 three-a of the banking law to make a consolidated return with affiliated
35 corporations taxable under part one and under part two of this subchap-
36 ter in which case the consolidated tax will be computed in accordance
37 with the provisions of part one of this subchapter. In all other cases
38 in which a corporation taxable under part two of this subchapter makes a
39 consolidated return with corporations taxable under part one of this
40 subchapter, the consolidated tax will be computed in accordance with the
41 provisions of part one of this subchapter. In any case in which a tax is
42 assessed upon the basis of a consolidated return, the total tax shall be
43 computed in the first instance as a unit and shall then be assessed upon
44 the respective affiliated corporations in such proportions as may be
45 agreed upon among them, or in the absence of any such agreement, then on
46 the basis of the net income properly assignable to each.

47 § 11-635 Payment of tax. Each taxpayer shall, at the time of filing
48 its return, pay to the commissioner of finance:

49 (a) the amount of tax payable under part one or two of this subchapter
50 as the same shall appear from the face of the return, or

51 (b) if payments of estimated tax have been made pursuant to section
52 11-636 of this part, the balance, if any, of the tax payable under part
53 one or two of this subchapter, as the same shall appear from the face of
54 the return, after applying thereto any payments made pursuant to said
55 section.

1 If the time for filing the return shall be extended, the taxpayer
2 shall pay in addition interest at the rate of six per centum per annum
3 from the time when the return was originally required to be filed to the
4 time of payment upon the amount by which the tax, or the portion thereof
5 payable when the return was required to be filed, exceeds the amount
6 then paid:

7 (1) a payment made on or before the date of filing of an application
8 for an automatic extension shall be deemed properly estimated if its
9 either: (A) not less than ninety per centum of the tax as finally
10 determined, or (B) not less than the tax shown on the taxpayer's return
11 for the preceding taxable year, if such preceding year was a taxable
12 year of twelve months; and

13 (2) the time when a return is required to be filed shall be determined
14 without regard to any extension of time for filing such return.

15 § 11-636 Declaration of estimated tax; payments on account of esti-
16 mated tax. 1. Every taxpayer subject to the tax imposed by part one or
17 two of this subchapter shall make a declaration of the estimated tax
18 upon the basis of its net income for the current calendar year, contain-
19 ing such information as the commissioner of finance may prescribe by
20 regulations or instructions, if such estimated tax can reasonably be
21 expected to exceed one thousand dollars.

22 2. The term "estimated tax" means the amount which a taxpayer esti-
23 mates to be the tax imposed upon it by part one or two of this subchap-
24 ter upon the basis of its net income for the current calendar year, less
25 the amount which it estimates to be the sum of any credits allowable
26 against the tax.

27 3. A declaration of estimated tax shall be filed on or before June
28 fifteenth of the calendar year upon the net income of which the tax is
29 based, except that if the requirements of subdivision one of this
30 section are first met:

31 (a) after June first and before October second of such calendar year,
32 the declaration shall be filed on or before October fifteenth, or

33 (b) after October first of such calendar year, the declaration shall
34 be filed on or before January fifteenth of the succeeding calendar year.

35 Notwithstanding any other provision of this subdivision, no declara-
36 tion need be filed prior to September eleventh, nineteen hundred sixty-
37 six.

38 4. A taxpayer may amend a declaration under regulations of the commis-
39 sioner of finance.

40 5. If, on or before February fifteenth of the succeeding year, a
41 taxpayer files its return for the calendar year upon the net income of
42 which the declaration is required to be based, and pays therewith the
43 balance, if any, of the full amount of the tax shown to be due on the
44 return,

45 (a) such return shall be considered as its declaration if no declara-
46 tion was required to be filed during such calendar year, but is other-
47 wise required to be filed on or before January fifteenth of the succeed-
48 ing year pursuant to subdivision three of this section,

49 (b) such return shall be considered as an amendment permitted by
50 subdivision four of this section to be filed on or before January
51 fifteenth if the tax shown on the return is greater than the estimated
52 tax shown on a declaration previously made.

53 6. The commissioner of finance may grant a reasonable extension of
54 time, not to exceed three months, for the filing of any declaration
55 required pursuant to this section, on such terms and conditions as the
56 commissioner may require.

1 7. Every taxpayer subject to the tax imposed by part one or two of
2 this subchapter shall pay with the return of tax, if any, required to be
3 filed upon the basis of its net income for the preceding calendar year,
4 or with an application for extension of the time for filing such return,
5 an amount equal to twenty-five per centum of the preceding year's tax,
6 if such preceding year's tax exceeded one thousand dollars.

7 8. The estimated tax with respect to which a declaration for such
8 calendar year is required pursuant to this section shall be paid as
9 follows:

10 (a) If the declaration is filed on or before June fifteenth, the esti-
11 mated tax shown thereon, after applying thereto the amount if any, paid
12 during the same calendar year pursuant to subdivision seven of this
13 section, shall be paid in three equal installments. One of such
14 installments shall be paid at the time of the filing of the declaration,
15 one shall be paid on the following October fifteenth, and one on the
16 following January fifteenth.

17 (b) If the declaration is filed after June fifteenth, and not after
18 October fifteenth of such calendar year, and is not required to be filed
19 on or before June fifteenth of such calendar year, the estimated tax
20 shown on such declaration, after applying thereto the amount, if any,
21 paid during the same calendar year pursuant to subdivision seven of this
22 section, shall be paid in two equal installments. One of such install-
23 ments shall be paid at the time of the filing of the declaration and one
24 shall be paid on the following January fifteenth.

25 (c) If the declaration is filed after October fifteenth of such calen-
26 dar year, and is not required to be filed on or before October fifteenth
27 of such calendar year, the estimated tax shown on such declaration,
28 after applying thereto the amount, if any, paid in respect of such
29 calendar year pursuant to subdivision seven of this section, shall be
30 paid in full at the time of the filing of the declaration.

31 (d) If the declaration is filed after the time prescribed therefor, or
32 after the expiration of any extension of time therefor, paragraphs (b)
33 and (c) of this subdivision shall not apply, and there shall be paid at
34 the time of such filing all installments of estimated tax payable at or
35 before such time, and the remaining installments shall be paid at the
36 times at which, and in the amounts in which, they would have been paya-
37 ble if the declaration had been filed when due.

38 9. If any amendment of a declaration is filed, the remaining install-
39 ments, if any, shall be ratably increased or decreased, as the case may
40 be, to reflect any increase or decrease in the estimated tax by reason
41 of such amendment, and if any amendment is made after October fifteenth
42 of the calendar year, any increase in the estimated tax by reason there-
43 of shall be paid at the time of making such amendment.

44 10. Any amount paid pursuant to subdivision seven of this section
45 shall be applied after payment as a first installment against the esti-
46 mated tax of the taxpayer shown on the declaration next required to be
47 filed pursuant to this section or, if no declaration of estimated tax is
48 required to be filed by the taxpayer pursuant to this section, any such
49 amount shall be considered a payment on account of the tax shown on the
50 return of tax required to be filed by the taxpayer upon the basis of its
51 net income for the calendar year during which such amount was paid.

52 11. Notwithstanding the provisions of section 11-679 of this chapter
53 or of section three-a of the general municipal law, if any amount paid
54 pursuant to subdivision seven of this section, exceeds the tax shown on
55 the return required to be filed by the taxpayer upon the basis of its
56 net income for the calendar year during which the amount was paid,

1 interest shall be allowed and paid on the amount by which the amount so
2 paid pursuant to such subdivision exceeds such tax, at the rate of six
3 per centum per annum from the date of payment of the amount so paid
4 pursuant to such subdivision to March fifteenth of the succeeding calen-
5 dar year, provided, however, that no interest shall be allowed or paid
6 under this subdivision if the amount thereof is less than one dollar.

7 12. As used in this section, "the preceding year's tax" means the tax
8 imposed upon the taxpayer by part one or two of this subchapter upon the
9 basis of its net income for the preceding calendar year, or, for
10 purposes of computing the first installment of estimated tax when an
11 application has been filed for extension of time for filing the return
12 required to be filed for such preceding calendar year, the amount prop-
13 erly estimated pursuant to section 11-635 of this part as the tax
14 imposed upon the basis of its net income for such calendar year.

15 13. This section shall apply to an income period of less than twelve
16 months in accordance with regulations of the commissioner of finance.

17 14. The commissioner of finance may grant a reasonable extension of
18 time, not to exceed six months, for payment of any installment of esti-
19 mated tax required pursuant to this section, on such terms and condi-
20 tions as the commissioner may require, including the furnishing of a
21 bond or other security by the taxpayer in an amount not exceeding twice
22 the amount for which any extension of time for payment is granted,
23 provided however, that interest at the rate of six per centum per annum
24 for the period of the extension shall be charged and collected on the
25 amount for which any extension of time for payment is granted under this
26 subdivision.

27 15. A taxpayer may elect to pay any installment of estimated tax prior
28 to the date prescribed in this section for payment thereof.

29 § 11-637 Real property taxable. Nothing in this subchapter shall be
30 construed to exempt the real property of any taxpayer from taxation to
31 the same extent, according to its value, as other real property is
32 taxed.

33 PART 4

34 BANKING CORPORATION TAX

35 § 11-638 General definitions. As used in this part:

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

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

41 (c) The term "international banking facility" shall mean an interna-
42 tional banking facility located in New York state and shall have the
43 same meaning as is set forth in the New York state banking law or regu-
44 lations of the New York state banking department or as is set forth in
45 the laws of the United States or regulations of the board of governors
46 of the federal reserve system.

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

51 (e) The term "subsidiary capital" means investments in the stock of
52 subsidiaries and any indebtedness from subsidiaries, exclusive of
53 accounts receivable acquired in the ordinary course of trade or business
54 for services rendered or for sales of property held primarily for sale

1 to customers, whether or not evidenced by written instrument, on which
2 interest is not claimed and deducted by the subsidiary for purposes of
3 taxation under this part or subchapter two of this chapter, provided,
4 however, there shall be deducted from subsidiary capital any liabilities
5 payable by their terms on demand or within one year from the date
6 incurred, other than loans or advances outstanding for more than a year
7 as of any date during the year covered by the return, which are attrib-
8 utable to subsidiary capital.

9 (f) The term "financial holding company" means a corporation that,
10 pursuant to subsection (1) of section four of the federal bank holding
11 company act of nineteen hundred fifty-six, as amended, has filed with
12 the federal reserve board a written declaration that the corporation
13 elects to be a financial holding company and whose election has not been
14 found to be ineffective by the federal reserve board.

15 § 11-639 Imposition of tax. (a) (1) For the privilege of doing busi-
16 ness in the city in a corporate or organized capacity, a tax, computed
17 under section 11-643 of this part, is hereby annually imposed on every
18 banking corporation for each of its taxable years, or any part thereof,
19 beginning on or after January first, nineteen hundred seventy-three and
20 before January first, two thousand fifteen.

21 (2) For the privilege of doing business in the city in a corporate or
22 organized capacity, a tax, computed under section 11-643 of this part,
23 is hereby annually imposed on every banking corporation for each taxable
24 year, or any part thereof, commencing on or after January first, two
25 thousand fifteen, where such banking corporation (i) has an election in
26 effect under subsection (a) of section thirteen hundred sixty-two of the
27 internal revenue code of 1986, as amended, or (ii) is a qualified
28 subchapter S subsidiary within the meaning of paragraph three of
29 subsection (b) of section thirteen hundred sixty-one of the internal
30 revenue code of nineteen eighty-six, as amended.

31 (b) In the case of a taxpayer whose taxable year is other than a
32 calendar year, there is hereby imposed a tax for the privilege of doing
33 business in the city in a corporate or organized capacity for the period
34 beginning January first, nineteen hundred seventy-three and extending
35 through the subsequent part of its first such taxable year ending after
36 such date. Such tax shall be computed under section 11-643 of this part
37 on the basis of such taxpayer's entire net income, or other applicable
38 basis as the case may be, for such period and shall be paid with a
39 return which shall be separately filed with the department of finance
40 not later than the fifteenth day of the third month succeeding the close
41 of such period. The requirements of sections 11-644 and 11-645 of this
42 part, relating to declarations and payments of estimated tax, except
43 subdivision (a) of section 11-645 of this part, shall not be applicable
44 to the tax imposed by this subdivision.

45 (c) For taxable years beginning on or after January first, two thou-
46 sand eleven, (1) a banking corporation is doing business in the city in
47 a corporate or organized capacity if (i) it has issued credit cards to
48 one thousand or more customers who have a mailing address within the
49 city as of the last day of its taxable year, or (ii) it has merchant
50 customer contracts with merchants and the total number of locations
51 covered by those contracts equals one thousand or more locations in the
52 city to whom the banking corporation remitted payments for credit card
53 transactions during the taxable year, or (iii) it has receipts of one
54 million dollars or more in the taxable year from its customers who have
55 been issued credit cards by the banking corporation and have a mailing
56 address within the city, or (iv) it has receipts of one million dollars

1 or more arising from merchant customer contracts with merchants relating
2 to locations in the city, or (v) the sum of the number of customers
3 described in subparagraph (i) of this paragraph plus the number of
4 locations covered by its contracts described in subparagraph (ii) of
5 this paragraph equals one thousand or more, or the amount of its
6 receipts described in subparagraphs (iii) and (iv) of this paragraph
7 equals one million dollars or more. For purposes of this paragraph,
8 receipts from processing credit card transactions for merchants include
9 merchant discount fees received by the banking corporation.

10 (2) As used in this subdivision, the term "credit card" includes bank,
11 credit, travel and entertainment cards.

12 (d) Cross-Reference. For the taxation of corporations that are not
13 described in paragraph two of subdivision (a) of this section, that were
14 taxable under this subchapter for tax years beginning before January
15 first, two thousand fifteen, see subchapter three-A of this chapter.

16 § 11-640 Banking, corporation defined; exempt corporations. (a) For
17 the purpose of this part, a banking corporation means:

18 (1) every corporation or association organized under the laws of this
19 state which is authorized to do a banking business or which is doing a
20 banking business;

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

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

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

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

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

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

34 (8) the mortgage facilities corporation created in article seven of
35 the private housing finance law;

36 (9) any corporation sixty-five percent or more of whose voting stock
37 is owned or controlled, directly or indirectly, by a corporation or
38 corporations subject to article three-a of the banking law, or regis-
39 tered under the federal bank holding company act of nineteen hundred
40 fifty-six, as amended, or registered as a savings and loan holding
41 company, but excluding a diversified savings and loan holding company,
42 under the federal national housing act, as amended, or by a corporation
43 or corporations described in paragraphs one through eight of this subdivi-
44 sion, provided the corporation whose voting stock is so owned or
45 controlled is principally engaged in a business, regardless of where
46 conducted, which (i) might be lawfully conducted by a corporation
47 subject to article three of the banking law or by a national banking
48 association or (ii) is so closely related to banking or managing or
49 controlling banks as to be a proper incident thereto, as set forth in
50 paragraph eight of subsection (c) or subparagraph (F) of paragraph four
51 of subsection (k) of section four of the federal bank holding company
52 act of nineteen hundred fifty-six, as amended, or (iii) holds and
53 manages investment assets, including but not limited to bonds, notes,
54 debentures and other obligations for the payment of money, stocks, part-
55 nership interests or other equity interests, and other investment secu-

1 rities, and which is not a business described in subparagraph (i) or
2 (ii) of this paragraph.

3 (b) Banking business defined. The words "banking business" as used in
4 this section mean such business as a corporation or association may be
5 created to do under article three, three-B, five, five-A, six or ten of
6 the banking law or any business which a corporation or association is
7 authorized by such article to do. However, with respect to a national
8 banking association organized under the authority of the United States,
9 a federal savings bank, a federal savings and loan association or a
10 production credit association, the words "banking business" as used in
11 this section mean such business as a national banking association,
12 federal savings bank, federal savings and loan association or production
13 credit association, respectively, may be created to do or is authorized
14 to do under the laws of the United States or this state. The words
15 "banking business" as used in this section shall also mean such business
16 as any corporation or association organized under the authority of the
17 United States or organized under the laws of any other state or country
18 has authority to do which is substantially similar to the business which
19 a corporation or association may be created to do under article three,
20 three-B, five, five-A, six or ten of the banking law or any business
21 which a corporation or association is authorized by such article to do.

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

25 (d) Corporations taxable under subchapter two. Notwithstanding the
26 provisions of this part, all corporations of classes now or heretofore
27 taxable under subchapter two of this chapter shall continue to be taxa-
28 ble under subchapter two of this chapter, except: (1) corporations
29 organized under article five-A of the banking law; (2) corporations
30 subject to article three-A of the banking law, or registered under the
31 federal bank holding company act of nineteen hundred fifty-six, as
32 amended, or registered as a savings and loan holding company, but
33 excluding a diversified savings and loan holding company, under the
34 federal national housing act, as amended, which make a combined return
35 under the provisions of subdivision (f) of section 11-646 of this part;
36 (3) banking corporations described in paragraph nine of subdivision (a)
37 of this section; and (4) any captive REIT or captive RIC that is
38 required to be included in a combined return under the provisions of
39 section 11-646 of this part. Provided, however, that a corporation
40 described in paragraph three of this subdivision which was subject to
41 the tax imposed by subchapter two of this chapter for its taxable year
42 ending during nineteen hundred eighty-four may, on or before the due
43 date for filing its return, determined with regard to extensions, for
44 its taxable year ending during nineteen hundred eighty-five, make a one
45 time election to continue to be taxable under such subchapter two. Such
46 election shall continue to be in effect until revoked by the taxpayer.
47 In no event shall such election or revocation be for a part of a taxable
48 year.

49 (e) Corporations taxable under article thirty-three of the tax law.
50 Except for corporations described in subsection (l) of section fourteen
51 hundred fifty-three of the tax law, corporations liable to tax under
52 article thirty-three of the tax law shall not be subject to tax under
53 this part.

54 (f) A banking corporation organized under the laws of a country, or
55 any political subdivision thereof, other than the United States shall
56 not be deemed to be doing business in the city under this subchapter if

1 its activities in the city are limited solely to (1) investing or trad-
2 ing in stocks and securities for its own account within the meaning of
3 clause (ii) of subparagraph (A) of paragraph two of subsection (b) of
4 section eight hundred sixty-four of the internal revenue code or (2)
5 investing or trading in commodities for its own account within the mean-
6 ing of clause (ii) of subparagraph (B) of paragraph two of subsection
7 (b) of section eight hundred sixty-four of the internal revenue code or
8 (3) any combination of activities described in paragraphs one and two of
9 this subdivision.

10 (g) Transitional provisions relating to the enactment and implementa-
11 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding
12 anything to the contrary contained in this section other than subdivi-
13 sion (m) of this section, a corporation that was in existence before
14 January first, two thousand and was subject to tax under subchapter two
15 of this chapter for its last taxable year beginning before January
16 first, two thousand, shall continue to be taxable under subchapter two
17 of this chapter for all taxable years beginning on or after January
18 first, two thousand and before January first, two thousand one;
19 provided, however, this shall not apply to any taxable year during which
20 such corporation is a banking corporation described in paragraphs one
21 through eight of subdivision (a) of this section. Notwithstanding
22 anything to the contrary contained in this section other than subdivi-
23 sion (m) of this section, a banking corporation that was in existence
24 before January first, two thousand and was subject to tax under this
25 subchapter for its last taxable year beginning before January first, two
26 thousand, shall continue to be taxable under this subchapter for all
27 taxable years beginning on or after January first, two thousand and
28 before January first, two thousand one. Provided, however, that nothing
29 in this subdivision shall prohibit a corporation that elected pursuant
30 to subdivision (d) of this section to be taxable under subchapter two of
31 this chapter from revoking that election in accordance with such subdivi-
32 sion (d).

33 For purposes of this paragraph, a corporation shall be considered to
34 be subject to tax under subchapter two of this chapter for a taxable
35 year if such corporation was not a taxpayer but was properly included in
36 a combined report filed pursuant to subdivision four of section 11-605
37 of this chapter for such taxable year and a corporation shall be consid-
38 ered to be subject to tax under this subchapter for a taxable year if
39 such corporation was not a taxpayer but was properly included in a
40 combined report filed pursuant to subdivision (f) or (g) of section
41 11-646 of this chapter for such taxable year. A corporation that was in
42 existence before January first, two thousand but first becomes a taxpay-
43 er in a taxable year beginning on or after January first, two thousand
44 and before January first, two thousand one, shall be considered for
45 purposes of this paragraph to have been subject to tax under subchapter
46 two of this chapter for its last taxable year beginning before January
47 first, two thousand if such corporation would have been subject to tax
48 under such subchapter for such taxable year if it had been a taxpayer
49 during such taxable year. A corporation that was in existence before
50 January first, two thousand but first becomes a taxpayer in a taxable
51 year beginning on or after January first, two thousand and before Janu-
52 ary first, two thousand one, shall be considered for purposes of this
53 paragraph to have been subject to tax under this subchapter for its last
54 taxable year beginning before January first, two thousand if such corpo-
55 ration would have been subject to tax under this subchapter for such
56 taxable year if it had been a taxpayer during such taxable year.

1 (2) Notwithstanding anything to the contrary contained in this section
2 other than subdivision (m) of this section, a corporation formed on or
3 after January first, two thousand and before January first, two thousand
4 one may elect to be subject to tax under this subchapter or under
5 subchapter two of this chapter for its first taxable year beginning on
6 or after January first, two thousand and before January first, two thou-
7 sand one in which either (i) sixty-five percent or more of its voting
8 stock is owned or controlled, directly or indirectly by a financial
9 holding company, provided the corporation whose voting stock is so owned
10 or controlled is principally engaged in activities that are described in
11 paragraph four or five of subdivision (k) of section four of the federal
12 bank holding company act of nineteen hundred fifty-six, as amended and
13 the regulations promulgated pursuant to the authority of such section or
14 (ii) it is a financial subsidiary. An election under this paragraph may
15 not be made by a corporation described in paragraphs one through eight
16 of subdivision (a) of this section or in subdivision (e) of this
17 section. In addition, an election under this paragraph may not be made
18 by a corporation that is a party to a reorganization, as defined in
19 subsection (a) of section three hundred sixty-eight of the internal
20 revenue code of nineteen hundred eighty-six, as amended, of a corpo-
21 ration described in paragraph one of this subdivision if both corpo-
22 rations were sixty-five percent or more owned or controlled, directly or
23 indirectly by the same interests at the time of the reorganization.

24 An election under this paragraph must be made by the taxpayer on or
25 before the due date for filing its return, determined with regard to
26 extensions of time for filing, for the applicable taxable year. The
27 election to be taxed under subchapter two of this chapter shall be made
28 by the taxpayer by filing the return required pursuant to subdivision
29 one of section 11-605 of this chapter and the election to be taxed under
30 this subchapter shall be made by the taxpayer by filing the return
31 required pursuant to subdivision (a) of section 11-646 of this chapter.
32 Any election made pursuant to this paragraph shall be irrevocable and
33 shall apply to each subsequent taxable year beginning on or after Janu-
34 ary first, two thousand and before January first, two thousand one,
35 provided that the stock ownership requirements described in subparagraph
36 (i) of this paragraph are met or such corporation described in subpara-
37 graph (ii) of this paragraph continues as a financial subsidiary.

38 (3) For purposes of this section, a financial subsidiary means a
39 corporation (i) sixty-five percent or more of whose voting stock is
40 owned or controlled, directly or indirectly by a banking corporation
41 described in paragraph one, two or three of subdivision (a) of this
42 section and (ii) is described in subdivision (g) of section five thou-
43 sand one hundred thirty-six-A of the revised statutes of the United
44 States or section forty-six of the federal deposit insurance act. For
45 purposes of this subchapter, the term "banking corporation" shall
46 include a corporation electing to be taxed under this subchapter pursu-
47 ant to paragraph two of this subdivision for so long as such election
48 shall be in effect.

49 (4) The provisions of this subdivision shall not apply to a captive
50 REIT or a captive RIC.

51 (h) Transitional provisions relating to the enactment and implementa-
52 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
53 to the contrary contained in this section other than subdivision (m) of
54 this section, a corporation that was in existence before January first,
55 two thousand one and was subject to tax under subchapter two of this
56 chapter for its last taxable year beginning before January first, two

1 thousand one, shall continue to be taxable under subchapter two for all
2 taxable years beginning on or after January first, two thousand one and
3 before January first, two thousand three, provided, however, this shall
4 not apply to any taxable year during which such corporation is a banking
5 corporation described in paragraphs one through eight of subdivision (a)
6 of this section. Notwithstanding anything to the contrary contained in
7 this section other than subdivision (m) of this section, a banking
8 corporation that was in existence before January first, two thousand one
9 and was subject to tax under this subchapter for its last taxable year
10 beginning before January first, two thousand one, shall continue to be
11 taxable under this subchapter for all taxable years beginning on or
12 after January first, two thousand one and before January first, two
13 thousand three. Provided, however, that nothing in this subdivision
14 shall prohibit a corporation that elected pursuant to subdivision (d) of
15 this section to be taxable under subchapter two of this chapter from
16 revoking that election in accordance with subdivision (d) of this
17 section.

18 For purposes of this paragraph, a corporation shall be considered to
19 be subject to tax under subchapter two of this chapter for a taxable
20 year if such corporation was not a taxpayer but was properly included in
21 a combined report filed pursuant to subdivision four of section 11-605
22 of this chapter for such taxable year and a corporation shall be consid-
23 ered to be subject to tax under this subchapter for a taxable year if
24 such corporation was not a taxpayer but was properly included in a
25 combined report filed pursuant to subdivision (f) or (g) of section
26 11-646 of this chapter for such taxable year. A corporation that was in
27 existence before January first, two thousand one but first becomes a
28 taxpayer in a taxable year beginning on or after January first, two
29 thousand one and before January first, two thousand three, shall be
30 considered for purposes of this paragraph to have been subject to tax
31 under subchapter two of this chapter for its last taxable year beginning
32 before January first, two thousand one if such corporation would have
33 been subject to tax under such subchapter for such taxable year if it
34 had been a taxpayer during such taxable year. A corporation that was in
35 existence before January first, two thousand one but first becomes a
36 taxpayer in a taxable year beginning on or after January first, two
37 thousand one and before January first, two thousand three, shall be
38 considered for purposes of this paragraph to have been subject to tax
39 under this subchapter for its last taxable year beginning before January
40 first, two thousand one if such corporation would have been subject to
41 tax under this subchapter for such taxable year if it had been a taxpay-
42 er during such taxable year.

43 (2) Notwithstanding anything to the contrary contained in this section
44 other than subdivision (m) of this section, a corporation formed on or
45 after January first, two thousand one and before January first, two
46 thousand three may elect to be subject to tax under this subchapter or
47 under subchapter two of this chapter for its first taxable year begin-
48 ning on or after January first, two thousand one and before January
49 first, two thousand three in which either (i) sixty-five percent or more
50 of its voting stock is owned or controlled, directly or indirectly by a
51 financial holding company, provided the corporation whose voting stock
52 is so owned or controlled is principally engaged in activities that are
53 described in paragraph four or five of subdivision (k) of section four
54 of the federal bank holding company act of nineteen hundred fifty-six,
55 as amended and the regulations promulgated pursuant to the authority of
56 such section or (ii) it is a financial subsidiary. An election under

1 this paragraph may not be made by a corporation described in paragraphs
2 one through eight of subdivision (a) of this section or in subdivision
3 (e) of this section. In addition, an election under this paragraph may
4 not be made by a corporation that is a party to a reorganization, as
5 defined in subsection (a) of section three hundred sixty-eight of the
6 internal revenue code of nineteen hundred eighty-six, as amended, of a
7 corporation described in paragraph one of this subdivision if both
8 corporations were sixty-five percent or more owned or controlled,
9 directly or indirectly by the same interests at the time of the reorgan-
10 ization.

11 An election under this paragraph must be made by the taxpayer on or
12 before the due date for filing its return, determined with regard to
13 extensions of time for filing, for the applicable taxable year. The
14 election to be taxed under subchapter two of this chapter shall be made
15 by the taxpayer by filing the return required pursuant to subdivision
16 one of section 11-605 of this chapter and the election to be taxed under
17 this subchapter shall be made by the taxpayer by filing the return
18 required pursuant to subdivision (a) of section 11-646 of this chapter.
19 Any election made pursuant to this paragraph shall be irrevocable and
20 shall apply to each subsequent taxable year beginning on or after Janu-
21 ary first, two thousand one and before January first, two thousand
22 three, provided that the stock ownership requirements described in
23 subparagraph (i) of this paragraph are met or such corporation described
24 in subparagraph (ii) of this paragraph continues as a financial subsid-
25 iary.

26 (3) For purposes of this section, a financial subsidiary means a
27 corporation (i) sixty-five percent or more of whose voting stock is
28 owned or controlled, directly or indirectly by a banking corporation
29 described in paragraph one, two or three of subdivision (a) of this
30 section and (ii) is described in subdivision (g) of section five thou-
31 sand one hundred thirty-six-A of the revised statutes of the United
32 States or section forty-six of the federal deposit insurance act. For
33 purposes of this subchapter, the term "banking corporation" shall
34 include a corporation electing to be taxed under this subchapter pursu-
35 ant to paragraph two of this subdivision for so long as such election
36 shall be in effect.

37 (i) Transitional provisions relating to the enactment and implementa-
38 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
39 to the contrary contained in this section other than subdivision (m) of
40 this section, a corporation that was in existence before January first,
41 two thousand three and was subject to tax under subchapter two of this
42 chapter for its last taxable year beginning before January first, two
43 thousand three, shall continue to be taxable under subchapter two for
44 all taxable years beginning on or after January first, two thousand
45 three and before January first, two thousand four provided, however,
46 this shall not apply to any taxable year during which such corporation
47 is a banking corporation described in paragraphs one through eight of
48 subdivision (a) of this section. Notwithstanding anything to the contra-
49 ry contained in this section other than subdivision (m) of this section,
50 a banking corporation that was in existence before January first, two
51 thousand three and was subject to tax under this subchapter for its last
52 taxable year beginning before January first, two thousand three, shall
53 continue to be taxable under this subchapter for all taxable years
54 beginning on or after January first, two thousand three and before Janu-
55 ary first, two thousand four. Provided, however, that nothing in this
56 subdivision shall prohibit a corporation that elected pursuant to subdi-

1 vision (d) of this section to be taxable under subchapter two of this
2 chapter from revoking that election in accordance with subdivision (d)
3 of this section.

4 For purposes of this paragraph, a corporation shall be considered to
5 be subject to tax under subchapter two of this chapter for a taxable
6 year if such corporation was not a taxpayer but was properly included in
7 a combined report filed pursuant to subdivision four of section 11-605
8 of this chapter for such taxable year and a corporation shall be consid-
9 ered to be subject to tax under this subchapter for a taxable year if
10 such corporation was not a taxpayer but was properly included in a
11 combined report filed pursuant to subdivision (f) or (g) of section
12 11-646 of this chapter for such taxable year. A corporation that was in
13 existence before January first, two thousand three but first becomes a
14 taxpayer in a taxable year beginning on or after January first, two
15 thousand three and before January first, two thousand four, shall be
16 considered for purposes of this paragraph to have been subject to tax
17 under subchapter two of this chapter for its last taxable year beginning
18 before January first, two thousand three if such corporation would have
19 been subject to tax under such subchapter for such taxable year if it
20 had been a taxpayer during such taxable year. A corporation that was in
21 existence before January first, two thousand three but first becomes a
22 taxpayer in a taxable year beginning on or after January first, two
23 thousand three and before January first, two thousand four, shall be
24 considered for purposes of this paragraph to have been subject to tax
25 under this subchapter for its last taxable year beginning before January
26 first, two thousand three if such corporation would have been subject to
27 tax under this subchapter for such taxable year if it had been a taxpay-
28 er during such taxable year.

29 (2) Notwithstanding anything to the contrary contained in this section
30 other than subdivision (m) of this section, a corporation formed on or
31 after January first, two thousand three and before January first, two
32 thousand four may elect to be subject to tax under this subchapter or
33 under subchapter two of this chapter for its first taxable year begin-
34 ning on or after January first, two thousand three and before January
35 first, two thousand four in which either (i) sixty-five percent or more
36 of its voting stock is owned or controlled, directly or indirectly by a
37 financial holding company, provided the corporation whose voting stock
38 is so owned or controlled is principally engaged in activities that are
39 described in paragraphs four or five of subdivision (k) of section four
40 of the federal bank holding company act of nineteen hundred fifty-six,
41 as amended and the regulations promulgated pursuant to the authority of
42 such section or (ii) it is a financial subsidiary. An election under
43 this paragraph may not be made by a corporation described in paragraphs
44 one through eight of subdivision (a) of this section or in subdivision
45 (e) of this section. In addition, an election under this paragraph may
46 not be made by a corporation that is a party to a reorganization, as
47 defined in subsection (a) of section three hundred sixty-eight of the
48 internal revenue code of nineteen hundred eighty-six, as amended, of a
49 corporation described in paragraph one of this subdivision if both
50 corporations were sixty-five percent or more owned or controlled,
51 directly or indirectly by the same interests at the time of the reorgan-
52 ization.

53 An election under this paragraph must be made by the taxpayer on or
54 before the due date for filing its return, determined with regard to
55 extensions of time for filing, for the applicable taxable year. The
56 election to be taxed under subchapter two of this chapter shall be made

1 by the taxpayer by filing the return required pursuant to subdivision
2 one of section 11-605 of this chapter and the election to be taxed under
3 this subchapter shall be made by the taxpayer by filing the return
4 required pursuant to subdivision (a) of section 11-646 of this chapter.
5 Any election made pursuant to this paragraph shall be irrevocable and
6 shall apply to each subsequent taxable year beginning on or after Janu-
7 ary first, two thousand three and before January first, two thousand
8 four, provided that the stock ownership requirements described in
9 subparagraph (i) of this paragraph are met or such corporation described
10 in subparagraph (ii) of this paragraph continues as a financial subsid-
11 iary.

12 (3) For purposes of this section, a financial subsidiary means a
13 corporation (i) sixty-five percent or more of whose voting stock is
14 owned or controlled, directly or indirectly by a banking corporation
15 described in paragraph one, two or three of subdivision (a) of this
16 section and (ii) is described in subdivision (g) of section five thou-
17 sand one hundred thirty-six-A of the revised statutes of the United
18 States or section forty-six of the federal deposit insurance act. For
19 purposes of this subchapter, the term "banking corporation" shall
20 include a corporation electing to be taxed under this subchapter pursu-
21 ant to paragraph two of this subdivision for so long as such election
22 shall 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 subdivision (m) of
26 this section, a corporation that was in existence before January first,
27 two thousand four and was subject to tax under subchapter two of this
28 chapter for its last taxable year beginning before January first, two
29 thousand four, shall continue to be taxable under subchapter two for all
30 taxable years beginning on or after January first, two thousand four and
31 before January first, two thousand six. The preceding sentence shall not
32 apply to any taxable year during which such corporation is a banking
33 corporation described in paragraphs one through eight of subdivision (a)
34 of this section. Notwithstanding anything to the contrary contained in
35 this section other than subdivision (m) of this section, a banking
36 corporation that was in existence before January first, two thousand
37 four and was subject to tax under this subchapter for its last taxable
38 year beginning before January first, two thousand four, shall continue
39 to be taxable under this subchapter for all taxable years beginning on
40 or after January first, two thousand four and before January first, two
41 thousand six. Provided, however, that nothing in this subdivision shall
42 prohibit a corporation that elected pursuant to subdivision (d) of this
43 section to be taxable under subchapter two of this chapter from revoking
44 that election in accordance with subdivision (d) of this section.

45 For purposes of this paragraph, a corporation shall be considered to
46 be subject to tax under subchapter two of this chapter for a taxable
47 year if such corporation was not a taxpayer but was properly included in
48 a combined report filed pursuant to subdivision four of section 11-605
49 of this chapter for such taxable year and a corporation shall be consid-
50 ered to be subject to tax under this subchapter for a taxable year if
51 such corporation was not a taxpayer but was properly included in a
52 combined report filed pursuant to subdivision (f) or (g) of section
53 11-646 of this chapter for such taxable year. A corporation that was in
54 existence before January first, two thousand four but first becomes a
55 taxpayer in a taxable year beginning on or after January first, two
56 thousand four and before January first, two thousand six, shall be

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

14 (2) Notwithstanding anything to the contrary contained in this section
15 other than subdivision (m) of this section, a corporation formed on or
16 after January first, two thousand four and before January first, two
17 thousand six may elect to be subject to tax under this subchapter or
18 under subchapter two of this chapter for its first taxable year begin-
19 ning on or after January first, two thousand four and before January
20 first, two thousand six in which either (i) sixty-five percent or more
21 of its voting stock is owned or controlled, directly or indirectly by a
22 financial holding company, provided the corporation whose voting stock
23 is so owned or controlled is principally engaged in activities that are
24 described in paragraph four or five of subdivision (k) of section four
25 of the federal bank holding company act of nineteen hundred fifty-six,
26 as amended and the regulations promulgated pursuant to the authority of
27 such section or (ii) it is a financial subsidiary. An election under
28 this paragraph may not be made by a corporation described in paragraphs
29 one through eight of subdivision (a) of this section or in subdivision
30 (e) of this section. In addition, an election under this paragraph may
31 not be made by a corporation that is a party to a reorganization, as
32 defined in subsection (a) of section three hundred sixty-eight of the
33 internal revenue code of nineteen hundred eighty-six, as amended, of a
34 corporation described in paragraph one of this subdivision if both
35 corporations were sixty-five percent or more owned or controlled,
36 directly or indirectly by the same interests at the time of the reorgan-
37 ization.

38 An election under this paragraph must be made by the taxpayer on or
39 before the due date for filing its return, determined with regard to
40 extensions of time for filing, for the applicable taxable year. The
41 election to be taxed under subchapter two of this chapter shall be made
42 by the taxpayer by filing the return required pursuant to subdivision
43 one of section 11-605 of this chapter and the election to be taxed under
44 this subchapter shall be made by the taxpayer by filing the return
45 required pursuant to subdivision (a) of section 11-646 of this chapter.
46 Any election made pursuant to this paragraph shall be irrevocable and
47 shall apply to each subsequent taxable year beginning on or after Janu-
48 ary first, two thousand four and before January first, two thousand six,
49 provided that the stock ownership requirements described in subparagraph
50 (i) of this paragraph are met or such corporation described in subpara-
51 graph (ii) of this paragraph 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 subdivision (a) of this
56 section and (ii) is described in subdivision (g) of section five thou-

1 sand one hundred thirty-six-A of the revised statutes of the United
2 States or section forty-six of the federal deposit insurance act. For
3 purposes of this subchapter, the term "banking corporation" shall
4 include a corporation electing to be taxed under this subchapter pursu-
5 ant to paragraph two of this subdivision for so long as such election
6 shall be in effect.

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

30 For purposes of this paragraph, a corporation shall be considered to
31 be subject to tax under subchapter two of this chapter for a taxable
32 year if such corporation was not a taxpayer but was properly included in
33 a combined report filed pursuant to subdivision four of section 11-605
34 of this chapter for such taxable year and a corporation shall be consid-
35 ered to be subject to tax under this subchapter for a taxable year if
36 such corporation was not a taxpayer but was properly included in a
37 combined report filed pursuant to subdivision (f) or (g) of section
38 11-646 of this part for such taxable year. A corporation that was in
39 existence before January first, two thousand six but first becomes a
40 taxpayer in a taxable year beginning on or after January first, two
41 thousand six and before January first, two thousand eight, shall be
42 considered for purposes of this paragraph to have been subject to tax
43 under subchapter two of this chapter for its last taxable year beginning
44 before January first, two thousand six if such corporation would have
45 been subject to tax under such subchapter for such taxable year if it
46 had been a taxpayer during such taxable year. A corporation that was in
47 existence before January first, two thousand six but first becomes a
48 taxpayer in a taxable year beginning on or after January first, two
49 thousand six and before January first, two thousand eight, shall be
50 considered for purposes of this paragraph to have been subject to tax
51 under this subchapter for its last taxable year beginning before January
52 first, two thousand six if such corporation would have been subject to
53 tax under this subchapter for such taxable year if it had been a taxpay-
54 er during such taxable year.

55 (2) Notwithstanding anything to the contrary contained in this section
56 other than subdivision (m) of this section, a corporation formed on or

1 after January first, two thousand six and before January first, two
2 thousand eight may elect to be subject to tax under this subchapter or
3 under subchapter two of this chapter for its first taxable year begin-
4 ning on or after January first, two thousand six and before January
5 first, two thousand eight in which either (i) sixty-five percent or more
6 of its voting stock is owned or controlled, directly or indirectly by a
7 financial holding company, provided the corporation whose voting stock
8 is so owned or controlled is principally engaged in activities that are
9 described in paragraph four or five of subdivision (k) of section four
10 of the federal bank holding company act of nineteen hundred fifty-six,
11 as amended and the regulations promulgated pursuant to the authority of
12 such section or (ii) it is a financial subsidiary. An election under
13 this paragraph may not be made by a corporation described in paragraphs
14 one through eight of subdivision (a) of this section or in subdivision
15 (e) of this section. In addition, an election under this paragraph may
16 not be made by a corporation that is a party to a reorganization, as
17 defined in subsection (a) of section three hundred sixty-eight of the
18 internal revenue code of nineteen hundred eighty-six, as amended, of a
19 corporation described in paragraph one of this subdivision if both
20 corporations were sixty-five percent or more owned or controlled,
21 directly or indirectly by the same interests at the time of the reorgan-
22 ization.

23 An election under this paragraph must be made by the taxpayer on or
24 before the due date for filing its return, determined with regard to
25 extensions of time for filing, for the applicable taxable year. The
26 election to be taxed under subchapter two of this chapter shall be made
27 by the taxpayer by filing the return required pursuant to subdivision
28 one of section 11-605 of this chapter and the election to be taxed under
29 this subchapter shall be made by the taxpayer by filing the return
30 required pursuant to subdivision (a) of section 11-646 of this part. Any
31 election made pursuant to this paragraph shall be irrevocable and shall
32 apply to each subsequent taxable year beginning on or after January
33 first, two thousand six and before January first, two thousand eight,
34 provided that the stock ownership requirements described in subparagraph
35 (i) of this paragraph are met or such corporation described in subpara-
36 graph (ii) of this paragraph continues as a financial subsidiary.

37 (3) For purposes of this section, a financial subsidiary means a
38 corporation (i) sixty-five percent or more of whose voting stock is
39 owned or controlled, directly or indirectly by a banking corporation
40 described in paragraph one, two or three of subdivision (a) of this
41 section and (ii) is described in subdivision (g) of section five thou-
42 sand one hundred thirty-six-A of the revised statutes of the United
43 States or section forty-six of the federal deposit insurance act. For
44 purposes of this subchapter, the term "banking corporation" shall
45 include a corporation electing to be taxed under this subchapter pursu-
46 ant to paragraph two of this subdivision for so long as such election
47 shall be in effect.

48 (1) Transitional provisions relating to the enactment and implementa-
49 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
50 to the contrary contained in this section other than subdivision (m) of
51 this section, a corporation that was in existence before January first,
52 two thousand fourteen and was subject to tax under subchapter two of
53 this chapter for its last taxable year beginning before January first,
54 two thousand fourteen, shall continue to be taxable under such subchap-
55 ter for all taxable years beginning on or after January first, two thou-
56 sand fourteen and before January first, two thousand seventeen,

1 provided, however, this shall not apply to any taxable year during which
2 such corporation is a banking corporation described in paragraphs one
3 through eight of subdivision (a) of this section. Notwithstanding
4 anything to the contrary contained in this section other than subdivi-
5 sion (m) of this section, a banking corporation or corporation that was
6 in existence before January first, two thousand fourteen and was subject
7 to tax under this subchapter for its last taxable year beginning before
8 January first, two thousand fourteen, shall continue to be taxable under
9 this subchapter for all taxable years beginning on or after January
10 first, two thousand fourteen and before January first, two thousand
11 seventeen only if the corporation is a banking corporation as defined in
12 subdivision (a) of this section or the corporation satisfies the
13 requirements for a corporation to elect to be taxable under this
14 subchapter. Provided further, that nothing in this subdivision shall
15 prohibit a corporation that elected pursuant to subdivision (d) of this
16 section to be taxable under subchapter two of this chapter from revoking
17 that election in accordance with subdivision (d) of this section. For
18 purposes of this paragraph, a corporation shall be considered to be
19 subject to tax under subchapter two of this chapter for a taxable year
20 if such corporation was not a taxpayer but was properly included in a
21 combined report filed pursuant to subdivision four of section 11-605 of
22 this chapter for such taxable year and a corporation shall be considered
23 to be subject to tax under this subchapter for a taxable year if such
24 corporation was not a taxpayer but was properly included in a combined
25 report filed pursuant to subdivision (f) or (g) of section 11-646 of
26 this part for such taxable year. A corporation that was in existence
27 before January first, two thousand fourteen but first becomes a taxpayer
28 in a taxable year beginning on or after January first, two thousand
29 fourteen and before January first, two thousand seventeen, shall be
30 considered for purposes of this paragraph to have been subject to tax
31 under subchapter two of this chapter for its last taxable year beginning
32 before January first, two thousand fourteen if such corporation would
33 have been subject to tax under such subchapter for such taxable year if
34 it had been a taxpayer during such taxable year. A corporation that was
35 in existence before January first, two thousand fourteen but first
36 becomes a taxpayer in a taxable year beginning on or after January
37 first, two thousand fourteen and before January first, two thousand
38 seventeen, shall be considered for purposes of this paragraph to have
39 been subject to tax under this subchapter for its last taxable year
40 beginning before January first, two thousand fourteen if such corpo-
41 ration would have been subject to tax under this subchapter for such
42 taxable year if it had been a taxpayer during such taxable year.

43 (2) Notwithstanding anything to the contrary contained in this section
44 other than subdivision (m) of this section, a corporation formed on or
45 after January first, two thousand fourteen and before January first, two
46 thousand seventeen may elect to be subject to tax under this subchapter
47 or under subchapter two of this chapter for its first taxable year
48 beginning on or after January first, two thousand fourteen and before
49 January first, two thousand seventeen in which either (i) sixty-five
50 percent or more of its voting stock is owned or controlled, directly or
51 indirectly by a financial holding company, provided the corporation
52 whose voting stock is so owned or controlled is principally engaged in
53 activities that are described in paragraph four or five of subdivision
54 (k) of section four of the federal bank holding company act of nineteen
55 hundred fifty-six, as amended and the regulations promulgated pursuant
56 to the authority of such section or (ii) it is a financial subsidiary.

1 An election under this paragraph may not be made by a corporation
2 described in paragraphs one through eight of subdivision (a) of this
3 section or in subdivision (e) of this section. In addition, an election
4 under this paragraph may not be made by a corporation that is a party to
5 a reorganization, as defined in subsection (a) of section three hundred
6 sixty-eight of the internal revenue code of nineteen hundred eighty-six,
7 as amended, of a corporation described in paragraph one of this subdivi-
8 sion if both corporations were sixty-five percent or more owned or
9 controlled, directly or indirectly by the same interests at the time of
10 the reorganization.

11 An election under this paragraph must be made by the taxpayer on or
12 before the due date for filing its return, determined with regard to
13 extensions of time for filing, for the applicable taxable year. The
14 election to be taxed under subchapter two of this chapter shall be made
15 by the taxpayer by filing the return required pursuant to subdivision
16 one of section 11-605 of this chapter and the election to be taxed under
17 this subchapter shall be made by the taxpayer by filing the return
18 required pursuant to subdivision (a) of section 11-646 of this part. Any
19 election made pursuant to this paragraph shall be irrevocable and shall
20 apply to each subsequent taxable year beginning on or after January
21 first, two thousand fourteen and before January first, two thousand
22 seventeen, provided that the stock ownership and activities requirements
23 described in subparagraph (i) of this paragraph are met or such corpo-
24 ration described in subparagraph (ii) of this paragraph continues as a
25 financial subsidiary.

26 (3) For purposes of this section, a financial subsidiary means a
27 corporation (i) sixty-five percent or more of whose voting stock is
28 owned or controlled, directly or indirectly by a banking corporation
29 described in paragraph one, two or three of subdivision (a) of this
30 section and (ii) is described in subdivision (g) of section five thou-
31 sand one hundred thirty-six-A of the revised statutes of the United
32 States or section forty-six of the federal deposit insurance act. For
33 purposes of this subchapter, the term "banking corporation" shall
34 include a corporation electing to be taxed under this subchapter pursu-
35 ant to paragraph two of this subdivision for so long as such election
36 shall be in effect.

37 (m) (1) Notwithstanding anything in this part to the contrary, if any
38 of the conditions described in paragraph three of this subdivision apply
39 to a corporation that has made either the election to be taxable under
40 subchapter two of chapter six of this title pursuant to the Gramm-Leach-
41 Bliley transitional provisions in this section, or the election pursuant
42 to subdivision (d) of this section to continue to be taxable under
43 subchapter two of chapter six of this title, hereinafter the "electing
44 corporation", then such corporation shall be deemed to have revoked the
45 election as of the first day of the taxable year in which such condition
46 applied.

47 (2) Notwithstanding anything in this part to the contrary, if any of
48 the conditions described in paragraph three of this subdivision apply to
49 a corporation required to be taxable under subchapter two of chapter six
50 of this title pursuant to the Gramm-Leach-Bliley transitional provisions
51 in this section, hereinafter the "grandfathered corporation", such
52 corporation, if it is otherwise described in subdivision (a) of this
53 section, shall be taxable under this part as of the first day of the
54 taxable year in which such condition applied.

55 (3) The provisions of paragraph one and paragraph two of this subdivi-
56 sion shall apply if any of the following conditions exist or occur with

1 respect to the electing corporation or the grandfathered corporation in
2 a taxable year, including any short taxable year, beginning on or after
3 January first, two thousand nine:

4 (A) the corporation ceases to be a taxpayer under subchapter two of
5 chapter six of this title;

6 (B) the corporation becomes subject to the fixed dollar minimum tax
7 under clause four of subparagraph a of paragraph (E) of subdivision one
8 of section 11-604 of this chapter;

9 (C) the corporation has no wages or receipts allocable to the city
10 pursuant to subdivision three of section 11-604 of this chapter, or is
11 otherwise inactive; provided that this subparagraph shall not apply to a
12 corporation which is engaged in the active conduct of a trade or busi-
13 ness, or substantially all of the assets of which are stock and securi-
14 ties of corporations which are directly or indirectly controlled by it
15 and are engaged in the active conduct of a trade or business;

16 (D) sixty-five percent or more of the voting stock of the corporation
17 becomes owned or controlled directly by a corporation that acquired the
18 stock in a transaction, or series of related transactions, that quali-
19 fies as a purchase within the meaning of paragraph three of subsection
20 (h) of section three hundred thirty-eight of the internal revenue code
21 unless the corporation whose stock was acquired and the corporation
22 acquiring the stock were, immediately prior to such purchase, members of
23 the same affiliated group, as such term is defined in section fifteen
24 hundred four of the internal revenue code without regard to the exclu-
25 sions provided for in subsection (b) of such section; or

26 (E) the corporation, in a transaction or series of related trans-
27 actions, acquires assets, whether by contribution, purchase, or other-
28 wise, having an average value, determined in accordance with subdivision
29 two of section 11-604 of this chapter, or, if greater, a total tax
30 basis, in excess of forty percent of the average value, or, if greater,
31 the total tax basis, of all the assets of the corporation immediately
32 prior to such acquisition and as a result of such acquisition the corpo-
33 ration is principally engaged in a business that is different from the
34 business immediately prior to such acquisition, provided that such
35 different business is described in subparagraph (i) or (ii) of paragraph
36 nine of subdivision (a) of this section.

37 (n) Transitional provisions relating to the enactment and implementa-
38 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
39 to the contrary contained in this section other than subdivision (m) of
40 this section, a corporation that was in existence before January first,
41 two thousand seventeen and was subject to tax under subchapter two of
42 this chapter for its last taxable year beginning before January first,
43 two thousand seventeen, shall continue to be taxable under such subchap-
44 ter for all taxable years beginning on or after January first, two thou-
45 sand seventeen and before January first, two thousand twenty, provided,
46 however, this shall not apply to any taxable year during which such
47 corporation is a banking corporation described in paragraphs one through
48 eight of subdivision (a) of this section. Notwithstanding anything to
49 the contrary contained in this section other than subdivision (m) of
50 this section, a banking corporation or corporation that was in existence
51 before January first, two thousand seventeen and was subject to tax
52 under this subchapter for its last taxable year beginning before January
53 first, two thousand seventeen, shall continue to be taxable under this
54 subchapter for all taxable years beginning on or after January first,
55 two thousand seventeen and before January first, two thousand twenty
56 only if the corporation is a banking corporation as defined in subdivi-

1 sion (a) of this section or the corporation satisfies the requirements
2 for a corporation to elect to be taxable under this subchapter. Provided
3 further, that nothing in this subdivision shall prohibit a corporation
4 that elected pursuant to subdivision (d) of this section to be taxable
5 under subchapter two of this chapter from revoking that election in
6 accordance with subdivision (d) of this section.

7 For purposes of this paragraph, a corporation shall be considered to
8 be subject to tax under subchapter two 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 subdivision four of section 11-605
11 of this chapter for such taxable year and a corporation shall be consid-
12 ered to be subject to tax under this subchapter for a taxable year if
13 such corporation was not a taxpayer but was properly included in a
14 combined report filed pursuant to subdivision (f) or (g) of section
15 11-646 of this part for such taxable year. A corporation that was in
16 existence before January first, two thousand seventeen but first becomes
17 a taxpayer in a taxable year beginning on or after January first, two
18 thousand seventeen and before January first, two thousand twenty, shall
19 be considered for purposes of this paragraph to have been subject to tax
20 under subchapter two of this chapter for its last taxable year beginning
21 before January first, two thousand seventeen if such corporation would
22 have been subject to tax under such subchapter for such taxable year if
23 it had been a taxpayer during such taxable year. A corporation that was
24 in existence before January first, two thousand seventeen but first
25 becomes a taxpayer in a taxable year beginning on or after January
26 first, two thousand seventeen and before January first, two thousand
27 twenty, shall be considered for purposes of this paragraph to have been
28 subject to tax under this subchapter for its last taxable year beginning
29 before January first, two thousand seventeen if such corporation would
30 have been subject to tax under this subchapter for such taxable year if
31 it had been a taxpayer during such taxable year.

32 (2) Notwithstanding anything to the contrary contained in this section
33 other than subdivision (m) of this section, a corporation formed on or
34 after January first, two thousand seventeen and before January first,
35 two thousand twenty may elect to be subject to tax under this subchapter
36 or under subchapter two of this chapter for its first taxable year
37 beginning on or after January first, two thousand seventeen and before
38 January first, two thousand twenty in which either (i) sixty-five
39 percent or more of its voting stock is owned or controlled, directly or
40 indirectly by a financial holding company, provided the corporation
41 whose voting stock is so owned or controlled is principally engaged in
42 activities that are described in paragraphs four or five of subdivision
43 (k) of section four of the federal bank holding company act of nineteen
44 hundred fifty-six, as amended, and the regulations promulgated pursuant
45 to the authority of such section or (ii) 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 subdivision (a) of this
48 section or in subdivision (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 three hundred
51 sixty-eight of the internal revenue code of nineteen hundred eighty-six,
52 as amended, of a corporation described in paragraph one of this subdivi-
53 sion if both corporations were sixty-five percent or more owned or
54 controlled, directly or indirectly, by the same interests at the time of
55 the reorganization.

1 An election under this paragraph shall be made by the taxpayer on or
2 before the due date for filing its return, determined with regard to
3 extensions of time for filing, for the applicable taxable year. The
4 election to be taxed under subchapter two of this chapter shall be made
5 by the taxpayer by filing the return required pursuant to subdivision
6 one of section 11-605 of this chapter and the election to be taxed under
7 this subchapter shall be made by the taxpayer by filing the return
8 required pursuant to subdivision (a) of section 11-646 of this part. Any
9 election made pursuant to this paragraph shall be irrevocable and shall
10 apply to each subsequent taxable year beginning on or after January
11 first, two thousand seventeen and before January first, two thousand
12 twenty, provided that the stock ownership and activities requirements
13 described in subparagraph (i) of this paragraph are met or such corpo-
14 ration described in subparagraph (ii) of this paragraph continues as a
15 financial subsidiary.

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

27 § 11-641 Computations of entire net income. (a) Entire net income
28 means total net income from all sources which shall be the same as the
29 entire taxable income, but not alternative minimum taxable income,

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

32 (2) which the taxpayer, in the case of a corporation which is exempt
33 from federal income tax, other than the tax on unrelated business taxa-
34 ble income imposed under section five hundred eleven of the internal
35 revenue code, but which is subject to tax under this part, would have
36 been required to report to the United States treasury department but for
37 such exemption, or

38 (3) which, in the case of a corporation organized under the laws of a
39 country other than the United States, is effectively connected with the
40 conduct of a trade or business within the United States as determined
41 under section eight hundred eighty-two of the internal revenue code, or

42 (4) which the taxpayer would have been required to report to the
43 United States treasury department if the taxpayer had not elected to be
44 taxed under subchapter s of chapter one of the internal revenue code, or

45 (5) which the taxpayer would have been required to report to the
46 United States treasury department if no election had been made to treat
47 the taxpayer as a qualified subchapter s subsidiary under paragraph
48 three of subsection (b) of section thirteen hundred sixty-one of the
49 internal revenue code, subject to the modifications and adjustments
50 provided in this section.

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

53 (1) (A) in the case of a corporation organized under the laws of a
54 country other than the United States, (i) any part of any income from
55 dividends or interest on any kind of stock, securities or indebtedness,
56 but only if such income is treated as effectively connected with the

1 conduct of a trade or business in the United States pursuant to section
2 eight hundred sixty-four of the internal revenue code, (ii) any income
3 exempt from federal taxable income under any treaty obligation of the
4 United States, but only if such income would be treated as effectively
5 connected in the absence of such exemption, provided that such treaty
6 obligation does not preclude the taxation of such income by a state, or
7 (iii) any income which would be treated as effectively connected if such
8 income were not excluded from gross income pursuant to subsection (a) of
9 section one hundred three of the internal revenue code; (B) in the case
10 of any other corporation, any part of any income from dividends or
11 interest on any kind of stock, securities or indebtedness; (C) except
12 that for purposes of subparagraphs (A) and (B) of this paragraph there
13 shall be excluded any amounts treated as dividends pursuant to section
14 seventy-eight of the internal revenue code and any amounts described in
15 paragraphs eleven and twelve of subdivision (e) of this section;

16 (2) taxes on or measured by income or profits paid or accrued within
17 the taxable year to the United States, or any of its possessions or to
18 any foreign country, taxes on or measured by income or profits paid or
19 accrued to the state or any subdivision thereof, including taxes imposed
20 under article nine, nine-A, thirteen-A, twenty-four-A, twenty-four-B of
21 the tax law, or under article thirty-two of the tax law as such article
22 was in effect on December thirty-first, two thousand fourteen and any
23 tax imposed under this part or subchapter two or three-A of this chap-
24 ter;

25 (4) for taxable years beginning after December thirty-first, nineteen
26 hundred eighty-one, except with respect to property which is a qualified
27 mass commuting vehicle described in subparagraph (D) of paragraph eight
28 of subsection (f) of section one hundred sixty-eight of the internal
29 revenue code, relating to qualified mass commuting vehicles, any amount
30 which the taxpayer claimed as a deduction in computing its federal taxa-
31 ble income solely as a result of an election made pursuant to the
32 provisions of such paragraph eight as it was in effect for agreements
33 entered into prior to January first, nineteen hundred eighty-four;

34 (5) 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 would have been required to include in the computa-
40 tion of its federal taxable income had it not made the election permit-
41 ted pursuant to such paragraph eight as it was in effect for agreements
42 entered into prior to January first, nineteen hundred eighty-four;

43 (6) in the case of property placed in service in taxable years begin-
44 ning before nineteen hundred ninety-four, for taxable years beginning
45 after December thirty-first, nineteen hundred eighty-one, except with
46 respect to property subject to the provisions of section two hundred
47 eighty-F of the internal revenue code and property subject to the
48 provisions of section one hundred sixty-eight of the internal revenue
49 code which is placed in service in this state in taxable years beginning
50 after December thirty-first, nineteen hundred eighty-four, the amount
51 allowable as a deduction determined under section one hundred sixty-
52 eight of the internal revenue code;

53 (7) upon the disposition of property to which paragraph seven of
54 subdivision (e) of this section applies, the amount, if any, by which
55 the aggregate of the amounts described in such paragraph seven attribut-

1 able to such property exceeds the aggregate of the amounts described in
2 paragraph six of this subdivision attributable to such property;

3 (11) for taxable years beginning before January first, two thousand
4 ten, in the case of a taxpayer subject to the provisions of subdivision
5 (c) of section five hundred eighty-five of the internal revenue code,
6 the amount allowed as a deduction pursuant to section one hundred
7 sixty-six of such code; and

8 (12) for taxable years beginning before January first, two thousand
9 ten, for taxpayers subject to the provisions of subdivision (i) of this
10 section, twenty percent of the excess of (A) the amount determined
11 pursuant to such subdivision (i) over (B) the amount which would have
12 been allowable had such institution maintained its bad debt reserve for
13 all taxable years on the basis of actual experience.

14 (13) for taxable years ending after September tenth, two thousand one,
15 in the case of qualified property described in paragraph two of
16 subsection k of section one hundred sixty-eight of the internal revenue
17 code, other than qualified resurgence zone property defined in subdivi-
18 sion (p) of this section, and other than qualified New York Liberty Zone
19 property described in paragraph two of subsection b of section fourteen
20 hundred-L of the internal revenue code, without regard to clause (i) of
21 subparagraph (C) of such paragraph, the amount allowable as a deduction
22 under section one hundred sixty-seven of the internal revenue code.

23 (14) for taxable years beginning on or after January first, two thou-
24 sand four, in the case of a taxpayer that is not an eligible farmer as
25 defined in subsection (n) of section six hundred six of the tax law, the
26 amount allowable as a deduction under sections one hundred seventy-nine,
27 one hundred sixty-seven and one hundred sixty-eight of the internal
28 revenue code with respect to a sport utility vehicle that is not a
29 passenger automobile as defined in paragraph five of subsection (d) of
30 section two hundred eighty-F of the internal revenue code.

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

33 (16) The amount of any federal deduction for taxes imposed under arti-
34 cle twenty-three of the tax law.

35 (17) For taxable years beginning in two thousand nineteen and two
36 thousand twenty, the amount of the increase in the federal interest
37 deduction allowed pursuant to paragraph ten of subdivision (j) of
38 section one hundred sixty-three of the internal revenue code.

39 (c)(1) Except as otherwise provided in paragraphs two and three of
40 this subdivision, in the case of the sale or exchange of property by a
41 taxpayer which has been subject to part one or two of this subchapter
42 three where the property has a higher adjusted basis for city tax
43 purposes than for federal tax purposes, there shall be allowed as a
44 deduction from entire net income, the portion of any gain or loss on
45 such sale which equals the difference in such basis.

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

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

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

1 (iii) where both the cost and the fair market price or value on Janu-
2 ary first, nineteen hundred sixty-six, are less than the value realized,
3 the basis for computing gain shall be the cost or the fair market price
4 or value on such date, whichever is higher;

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

9 (3) In case of property of a savings bank acquired prior to January
10 first, nineteen hundred sixty-six, and disposed of thereafter, in
11 computing entire net income the basis of such property shall be the fair
12 market price or value on January first, nineteen hundred sixty-six.

13 (d) Entire net income shall not include any refund or credit of a tax
14 for which no exclusion or deduction was allowed in determining the
15 taxpayer's entire net income under this subchapter or subchapter two of
16 this chapter, or imposed by article twenty-three of the tax law for any
17 prior year.

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

21 (1) interest on indebtedness incurred or continued to purchase or
22 carry obligations or securities the income from which is subject to tax
23 under this part but exempt from federal income tax,

24 (2) ordinary and necessary expenses paid or incurred during the taxa-
25 ble year attributable to income which is subject to tax under this part
26 but exempt from federal income tax,

27 (3) the amortizable bond premium for the taxable year on any bond the
28 interest on which is subject to tax under this part but exempt from
29 federal income tax,

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

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

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

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

1 code which is placed in service in this state in taxable years beginning
2 after December thirty-first, nineteen hundred eighty-four, and provided
3 a deduction has not been excluded from entire net income pursuant to
4 paragraph four of subdivision (b) of this section, an amount with
5 respect to property which is subject to the provisions of section one
6 hundred sixty-eight of the internal revenue code equal to the amount
7 allowable as the depreciation deduction under section one hundred
8 sixty-seven of the internal revenue code as such section would have
9 applied to property placed in service on December thirty-first, nineteen
10 hundred eighty,

11 (8) upon the disposition of property to which paragraph seven of this
12 subdivision applies, the amount, if any, by which the aggregate of the
13 amounts described in paragraph six of subdivision (b) of this section
14 attributable to such property exceeds the aggregate of the amounts
15 described in paragraph seven of this subdivision attributable to such
16 property,

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

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

26 (11) (i) seventeen percent of interest income from subsidiary capital,
27 and

28 (ii) sixty percent of dividend income from subsidiary capital, and

29 (iii) sixty percent of the amount by which gains from subsidiary capi-
30 tal exceed losses from subsidiary capital, to the extent such gains and
31 losses were taken into account in determining the entire taxable income
32 referred to in subdivision (a) of this section,

33 (12) twenty-two and one-half percent of interest income on obligations
34 of New York state, or of any political subdivision thereof, or on obli-
35 gations of the United States, other than obligations held for resale in
36 connection with regular trading activities,

37 (13) for the taxable years beginning before January first, two thou-
38 sand ten, in the case of a taxpayer which recaptures its balance of the
39 reserve for losses on loans for federal income tax purposes pursuant to
40 subdivision (c) of section five hundred eight-five of the internal
41 revenue code, any amount which is included in federal taxable income
42 pursuant to subdivision (c) of section five hundred eighty-five of such
43 code,

44 (14) for taxable years beginning before January first, two thousand
45 ten, in the case of a taxpayer subject to the provisions of subdivision
46 (c) of section five hundred eighty-five of the internal revenue code,
47 any amount which is included in federal taxable income as a result of a
48 recovery of a loan,

49 (15) for taxable years beginning before January first, two thousand
50 ten, in the case of a taxpayer which is currently or has previously been
51 subject to subdivision (h) of this section, any amount which is included
52 in federal taxable income pursuant to paragraph two of subdivision (e)
53 of section five hundred ninety-three of the internal revenue code, and
54 any other amount so included as a result of a recovery of or termination
55 from the use of a bad debt reserve as defined in section five hundred
56 ninety-three of such code as in existence on December thirty-first,

1 nineteen hundred ninety-five as a result of federal legislation enacted
2 after December thirty-first, nineteen hundred ninety-five,

3 (16) one hundred percent of dividend income from subsidiary capital
4 received during the taxable year if that dividend income is directly
5 attributable to a dividend from a captive REIT or captive RIC for which
6 the captive REIT or captive RIC claimed a federal dividends paid
7 deduction and that captive REIT or captive RIC is included in a combined
8 report or return under subchapter two or part four of subchapter three
9 of this chapter.

10 (f) Provided the taxpayer has not made an election pursuant to para-
11 graph two of subdivision (b) of section 11-642 of this part, there shall
12 be allowed as a deduction in determining entire net income, to the
13 extent not deductible in determining federal taxable income, the
14 adjusted eligible net income of an international banking facility deter-
15 mined as follows:

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

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

21 (A) making, arranging for, placing or servicing loans to foreign
22 persons, provided, however, that in the case of a foreign person which
23 is an individual, or which is a foreign branch of a domestic corpo-
24 ration, other than a bank, or which is a foreign corporation or foreign
25 partnership which is eighty per centum or more owned or controlled,
26 either directly or indirectly, by one or more domestic corporations,
27 other than banks, domestic partnerships or resident individuals,
28 substantially all the proceeds of the loan are intended for use outside
29 of the United States;

30 (B) making or placing deposits with foreign persons which are banks or
31 foreign branches of banks, including foreign subsidiaries or foreign
32 branches of the taxpayer, or with other international banking facili-
33 ties; or

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

36 (3) Applicable expenses shall be any expenses or other deductions
37 attributable, directly or indirectly, to the eligible gross income
38 described in paragraph two of this subdivision.

39 (4) Adjusted eligible net income shall be determined by subtracting
40 from eligible net income the ineligible funding amount, and by subtract-
41 ing from the amount then remaining the floor amount.

42 (5) The ineligible funding amount shall be the amount, if any, deter-
43 mined by multiplying eligible net income by a fraction, the numerator of
44 which is the average aggregate amount for the taxable year of all
45 liabilities, including deposits, and other sources of funds of the
46 international banking facility which were not owed to or received from
47 foreign persons, and the denominator of which is the average aggregate
48 amount for the taxable year of all liabilities, including deposits and
49 other sources of funds of the international banking facility.

50 (6) The floor amount shall be the amount, if any, determined by multi-
51 plying the amount remaining after subtracting the ineligible funding
52 amount from the eligible net income by a fraction, not greater than one,
53 which is determined as follows:

54 (A) The numerator shall be

55 (i) the percentage, as set forth in subparagraph (C) of this para-
56 graph, of the average aggregate amount of the taxpayer's loans to

1 foreign persons and deposits with foreign persons which are banks or
2 foreign branches of banks, including foreign subsidiaries or foreign
3 branches of the taxpayer, which loans and deposits were recorded in the
4 financial accounts of the taxpayer for its branches, agencies and
5 offices within the state for taxable years nineteen hundred seventy-
6 five, nineteen hundred seventy-six and nineteen hundred seventy-seven,
7 minus

8 (ii) the average aggregate amount of such loans and such deposits for
9 the taxable year of the taxpayer, other than such loans and deposits of
10 an international banking facility, provided, however, that in no case
11 shall the amount determined in this clause exceed the amount determined
12 in clause (i) of this subparagraph; and

13 (B) The denominator shall be the average aggregate amount of the loans
14 to foreign persons and deposits with foreign persons which are banks or
15 foreign branches of banks, including foreign subsidiaries or foreign
16 branches of the taxpayer, which loans and deposits were recorded in the
17 financial accounts of the taxpayer's international banking facility for
18 the taxable year.

19 (C) The percentage shall be one hundred percent for the first taxable
20 year in which the taxpayer establishes an international banking facility
21 and for the next succeeding four taxable years. The percentage shall be
22 eighty percent for the fifth, sixty percent for the sixth, forty percent
23 for the seventh, and twenty percent for the eighth taxable year next
24 succeeding the year such taxpayer establishes such international banking
25 facility, and zero in the ninth succeeding year and thereafter.

26 (7) In the event adjusted eligible net income is a loss, such loss
27 shall be added to entire net income.

28 (8) For purposes of this subdivision, the term "foreign person" means:

29 (A) an individual who is not a resident of the United States,

30 (B) a foreign corporation, a foreign partnership or a foreign trust,
31 as defined in section seventy-seven hundred one of the internal revenue
32 code, other than a domestic branch thereof,

33 (C) a foreign branch of a domestic corporation, including the taxpay-
34 er,

35 (D) a foreign government or an international organization or an agency
36 of either, or

37 (E) an international banking facility.

38 For purposes of this paragraph, the terms "foreign" and "domestic"
39 shall have the same meaning as set forth in section seventy-seven
40 hundred one of the internal revenue code.

41 (g) Entire net income shall be computed without regard to the
42 reduction in the basis of property that is required by section three
43 hundred sixty-two of the internal revenue code, because of any amount of
44 money or other property received from the federal deposit insurance
45 corporation pursuant to subsection (c) of section thirteen of the feder-
46 al deposit insurance act, as amended, or from the federal savings and
47 loan insurance corporation pursuant to paragraph one, two, three or four
48 of subsection (f) of section four hundred six of the federal national
49 housing act, as amended.

50 (h)(1) For purposes of this subdivision, a "thrift institution" is a
51 banking corporation which satisfies the requirements of subparagraphs
52 (A) and (B) of this paragraph.

53 (A) Such banking corporation must be (i) a banking corporation as
54 defined in paragraph one of subdivision (a) of section 11-640 of this
55 part created or authorized to do business under article six or ten of
56 the banking law, (ii) a banking corporation as defined in paragraph two

1 or seven of subdivision (a) of section 11-640 of this part which is
2 doing a business substantially similar to the business which a corpo-
3 ration or association may be created to do under article six or ten of
4 the banking law or any business which a corporation or association is
5 authorized by such article to do, or (iii) a banking corporation as
6 defined in paragraph four or five of subdivision (a) of section 11-640
7 of this part.

8 (B) At least sixty percent of the amount of the total assets, at the
9 close of the taxable year, of such banking corporation must consist of
10 (i) cash; (ii) obligations of the United States or of a state or poli-
11 tical subdivision thereof, and stock or obligations of a corporation
12 which is an instrumentality of the United States or of a state or poli-
13 tical subdivision thereof, but not including obligations the interest on
14 which is excludable from gross income under section one hundred three of
15 the internal revenue code; (iii) loans secured by a deposit or share of
16 a member; (iv) loans secured by an interest in real property which is,
17 or from the proceeds of the loan, will become, residential real property
18 or real property used primarily for church purposes, loans made for the
19 improvement of residential real property or real property used primarily
20 for church purposes, provided that for purposes of this clause, residen-
21 tial real property shall include single or multifamily dwellings, facil-
22 ities in residential developments dedicated to public use or property
23 used on a nonprofit basis for residents, and mobile homes not used on a
24 transient basis; (v) property acquired through the liquidation of
25 defaulted loans described in clause (iv) of this subparagraph; (vi) any
26 regular or residual interest in a REMIC, as such term is defined in
27 section eight hundred sixty-D of the internal revenue code and any regu-
28 lar interest in a FASIT, as such term is defined in section eight
29 hundred sixty-L of the internal revenue code, but only in the proportion
30 which the assets of such REMIC or FASIT consist of property described in
31 clauses (i) through (v) of this subparagraph, except that if ninety-five
32 percent or more of the assets of such REMIC or FASIT are assets
33 described in clauses (i) through (v) of this subparagraph, the entire
34 interest in the REMIC or FASIT shall qualify; (vii) any mortgage-backed
35 security which represents ownership of a fractional undivided interest
36 in a trust, the assets of which consist primarily of mortgage loans,
37 provided that the real property which serves as security for the loans
38 is, or from the proceeds of the loan, will become, the type of property
39 described in clause (iv) of this subparagraph and any collateralized
40 mortgage obligation, the security for which consists primarily of mort-
41 gage loans, provided that the real property which serves as security for
42 the loans is, or from the proceeds of the loan, will become, the type of
43 property described in clause (iv) of this subparagraph; (viii) certif-
44 icates of deposit in, or obligations of, a corporation organized under a
45 state law which specifically authorizes such corporation to insure the
46 deposits or share accounts of member associations; (ix) loans secured by
47 an interest in real property located within any urban renewal area to be
48 developed for predominantly residential use under an urban renewal plan
49 approved by the Secretary of Housing and Urban Development under part A
50 or part B of title I of the Housing Act of nineteen hundred forty-nine,
51 as amended, or located within any area covered by a program eligible for
52 assistance under section one hundred three of the Demonstration Cities
53 and Metropolitan Development Act of nineteen hundred sixty-six, as
54 amended, and loans made for the improvement of any such real property;
55 (x) loans secured by an interest in educational, health, or welfare
56 institutions or facilities, including structures designed or used prima-

1 rely for residential purposes for students, residents, and persons under
2 care, employees, or members of the staff of such institutions or facili-
3 ties; (xi) loans made for the payment of expenses of college or univer-
4 sity education or vocational training; (xii) property used by the
5 taxpayer in the conduct of business which consists principally of
6 acquiring the savings of the public and investing in loans; (xiii) loans
7 for which the taxpayer is the creditor and which are wholly secured by
8 loans described in clause (iv) of this subparagraph, but excluding loans
9 for which the taxpayer is the creditor to any banking corporation
10 described in paragraphs one through seven of subdivision (a) of section
11 11-640 of this part or a real estate investment trust, as such term is
12 defined in section eight hundred fifty-six of the internal revenue code,
13 and excluding loans which are treated by the taxpayer as subsidiary
14 capital for purposes of the deductions provided by paragraph eleven of
15 subdivision (e) of this section; (xiv) small business loans or small
16 farm loans located in low-income or moderate-income census tracts or
17 block numbering areas delineated by the United States bureau of the
18 census in the most recent decennial census; and (xv) community develop-
19 ment loans or community development investments. For purposes of clause
20 (xv) of this subparagraph, a "community development loan" is a loan that
21 (I) has as its primary purpose community development, (II) has not been
22 reported or collected by the taxpayer for consideration in the taxpay-
23 er's community reinvestment act evaluation pursuant to the federal
24 community reinvestment act of nineteen hundred seventy-seven, as
25 amended, or section twenty-eight-b of the banking law as a mortgage loan
26 described in clause (iv) of this subparagraph or a small business loan,
27 small farm loan, or consumer loan, (III) benefits the taxpayer's assess-
28 ment area or areas for purposes of the federal community reinvestment
29 act of nineteen hundred seventy-seven, as amended or section twenty-
30 eight-b of the banking law or a broader statewide or regional area that
31 includes the taxpayer's assessment area, and (IV) is identified in the
32 taxpayer's books and records as a community development loan for
33 purposes of its community reinvestment act evaluation pursuant to the
34 federal community reinvestment act of nineteen hundred seventy-seven, as
35 amended or section twenty-eight-b of the banking law. For purposes of
36 clause (xv) of this subparagraph, a "community development investment"
37 is an investment in a security which has as its primary purpose communi-
38 ty development and which is identified in the taxpayer's books and
39 records as a qualified investment for purposes of its community rein-
40 vestment act evaluation pursuant to the federal community reinvestment
41 act of nineteen hundred seventy-seven, as amended or section twenty-
42 eight-b of the banking law. For purposes of this subparagraph, "communi-
43 ty development" means (I) affordable housing, including multifamily
44 rental housing for low-income or moderate-income individuals; (II)
45 community services targeted to low-income or moderate-income individ-
46 uals; (III) activities that promote economic development by financing
47 businesses or farms that meet the size eligibility standards of the
48 small business administration's development company or small business
49 investment company programs or have gross annual revenues of one million
50 dollars or less; (IV) activities that revitalize or stabilize low-income
51 or moderate-income census tracts or block numbering areas delineated by
52 the United States bureau of the census in the most recent decennial
53 census; or (V) activities that seek to prevent defaults and/or foreclo-
54 sures in loans included in items (I) and (III) of this subclause.

55 (C) At the election of the taxpayer, the percentage specified in
56 subparagraph (B) of this paragraph shall be applied on the basis of the

1 average assets outstanding during the taxable year, in lieu of the close
2 of the taxable year. For purposes of clause (iv) of subparagraph (B) of
3 this paragraph, if a multifamily structure securing a loan is used in
4 part for nonresidential use purposes, the entire loan is deemed a resi-
5 dential real property loan if the planned residential use exceeds eighty
6 percent of the property's planned use, determined as of the time the
7 loan is made. Also, for purposes of clause (iv) of subparagraph (B) of
8 this paragraph, loans made to finance the acquisition or development of
9 land shall be deemed to be loans secured by an interest in residential
10 real property if there is a reasonable assurance that the property will
11 become residential real property within a period of three years from the
12 date of acquisition of such land; but this shall not apply for any taxa-
13 ble year unless, within such three year period, such land becomes resi-
14 dential real property. For purposes of determining whether any interest
15 in a REMIC qualifies under clause (vi) of subparagraph (B) of this para-
16 graph, any regular interest in another REMIC held by such REMIC shall be
17 treated as a loan described in clauses (i), (ii), (iii), (iv) or (v) of
18 subparagraph (B) of this paragraph under principles similar to the prin-
19 ciple of such clause (vi); except that if such REMICS are part of a
20 tiered structure, they shall be treated as one REMIC for purposes of
21 such clause (vi).

22 (2) For taxable years beginning before January first, two thousand
23 ten, a thrift institution must exclude from the computation of its
24 entire net income any amount allowed as a deduction for federal income
25 tax purposes pursuant to section one hundred sixty-six, five hundred
26 eight-five or five hundred ninety-three of the internal revenue code.

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

31 (A) the amount determined to be a reasonable addition to the reserve
32 for losses on nonqualifying loans, computed in the same manner as is
33 provided with respect to additions to the reserves for losses on loans
34 of banks under paragraph one of subdivision (i) of this section, plus

35 (B) the amount determined by the taxpayer to be a reasonable addition
36 to the reserve for losses on qualifying real property loans, but such
37 amount shall not exceed the amount determined under paragraph four or
38 five of this subdivision, whichever is the larger, but the amount deter-
39 mined under this subparagraph shall in no case be greater than the larg-
40 er of:

41 (i) the amount determined under paragraph five of this subdivision, or

42 (ii) the amount which, when added to the amount determined under
43 subparagraph (A) of this paragraph, equals the amount by which twelve
44 percent of the total deposits or withdrawable accounts of depositors of
45 the taxpayer at the close of such year exceeds the sum of its surplus,
46 undivided profits and reserves at the beginning of such year, taking
47 into account any portion thereof attributable to the period before the
48 first taxable year beginning after December thirty-first, nineteen
49 hundred fifty-one.

50 The taxpayer must include in its tax return for each year a computa-
51 tion of the amount of the addition to the bad debt reserve determined
52 under this subdivision. The use of a particular method in the return for
53 a taxable year is not a binding election by the taxpayer.

54 (4)(A) Subject to subparagraphs (B) and (C) of this paragraph, the
55 amount determined under this paragraph for the taxable year shall be an

1 amount equal to thirty-two percent of the entire net income for such
2 year.

3 (B) The amount determined under subparagraph (A) of this paragraph
4 shall be reduced, but not below zero, by the amount determined under
5 subparagraph (A) of paragraph three of this subdivision.

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

10 (D) For purposes of this paragraph, entire net income shall be
11 computed

12 (i) by excluding from income any amount included therein by reason of
13 subparagraph (B) of paragraph eight of this subdivision,

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

16 (iii) by excluding from income an amount equal to the net gain for the
17 taxable year arising from the sale or exchange of stock of a corporation
18 or of obligations the interest on which is excludable from gross income
19 under section one hundred three of the internal revenue code.

20 (iv) Whenever a thrift institution is properly includable in a
21 combined return, entire net income, for purposes of this paragraph,
22 shall not exceed the lesser of the thrift institution's separately
23 computed entire net income as adjusted pursuant to clauses (i) through
24 (iii) of this subparagraph or the combined group's entire net income as
25 adjusted pursuant to clauses (i) through (iii) of this subparagraph.

26 (5) The amount determined under this paragraph for the taxable year
27 shall be computed in the same manner as is provided under paragraph one
28 of subdivision (i) of this section with respect to additions to reserves
29 for losses on loans of banks. Provided, however, that for any taxable
30 year beginning after nineteen hundred ninety-five, for purposes of such
31 computation, the base year shall be the later of (A) the last taxable
32 year beginning in nineteen hundred ninety-five or (B) the last taxable
33 year before the current year in which the amount determined under the
34 provisions of subparagraph (B) of paragraph three of this subdivision
35 exceeded the amount allowable under this paragraph.

36 (6) (A) (i) Each taxpayer described in paragraph one of this subdivi-
37 sion shall establish and maintain a New York reserve for losses on qual-
38 ifying real property loans, a New York reserve for losses on nonqualify-
39 ing loans and a supplemental reserve for losses on loans. Such reserves
40 shall be maintained for all subsequent taxable years that this subdivi-
41 sion applies to the taxpayer.

42 (ii) For purposes of this subdivision, such reserves shall be treated
43 as reserves for bad debts, but no deduction shall be allowed for any
44 addition to the supplemental reserve for losses on loans.

45 (iii) Except as provided in this clause, the balances of each such
46 reserve at the beginning of the first day of the first taxable year
47 beginning after December thirty-first, nineteen hundred ninety-five
48 shall be the same as the balances maintained for federal income tax
49 purposes in accordance with paragraph one of subdivision (c) of section
50 five hundred ninety-three of the internal revenue code as in existence
51 on December thirty-first, nineteen hundred ninety-five for the last day
52 of the last tax year beginning before January first, nineteen hundred
53 ninety-six. A taxpayer which maintained a New York reserve for loan
54 losses on qualifying real property loans in the last tax year beginning
55 before January first, nineteen hundred ninety-six shall have a continua-

1 tion of such New York reserve balance in lieu of the amount determined
2 under this clause.

3 (iv) Notwithstanding clause (ii) of this subparagraph, any amount
4 allocated to the reserve for losses on qualifying real property loans
5 pursuant to paragraph five of subdivision (c) of section five hundred
6 ninety-three of the internal revenue code as in effect immediately prior
7 to the enactment of the Tax Reform Act of nineteen hundred seventy six
8 shall not be treated as a reserve for bad debts for any purpose other
9 than determining the amount referred to in subparagraph (B) of paragraph
10 three of this subdivision, and for such purpose such amount shall be
11 treated as remaining in such reserve.

12 (B) Any debt becoming worthless or partially worthless in respect of a
13 qualifying real property loan shall be charged to the reserve for losses
14 on such loans and any debt becoming worthless or partially worthless in
15 respect of a nonqualifying loan shall be charged to the reserve for
16 losses on nonqualifying loans, except that any such debt may, at the
17 election of the taxpayer, be charged in whole or in part to the supple-
18 mental reserve for losses on loans.

19 (C) The New York reserve for losses on qualifying real property loans
20 shall be increased by the amount determined under subparagraph (B) of
21 paragraph three of this subdivision and the New York reserve for losses
22 on nonqualifying loans shall be increased by the amount determined under
23 subparagraph (A) of paragraph three of this subdivision.

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

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

53 (C) For purposes of this subdivision, the term "loan" shall mean debt,
54 as the term "debt" is used in section one hundred sixty-six of the
55 internal revenue code.

1 (D) A regular or residual interest in a REMIC, as such term is defined
2 in section eight hundred sixty-D of the internal revenue code, shall be
3 treated as a qualifying real property loan, except that, if less than
4 ninety-five percent of the assets of such REMIC are qualifying real
5 property loans, determined as if the taxpayer held the assets of the
6 REMIC, such interest shall be so treated only in the proportion which
7 the assets of such REMIC consist of such loans. For purposes of deter-
8 mining whether any interest in a REMIC qualifies under the provisions of
9 this paragraph, any interest in another REMIC held by such REMIC shall
10 be treated as a qualifying real property loan under principles similar
11 to the principles of this paragraph, except that if such REMICS are part
12 of a tiered structure, they shall be treated as one REMIC for purposes
13 of this paragraph.

14 (8)(A) Any distribution of property, as defined in subdivision (a) of
15 section three hundred seventeen of the internal revenue code, by a
16 thrift institution to a shareholder with respect to its stock, if such
17 distribution is not allowable as a deduction under section five hundred
18 ninety-one of such code, shall be treated as made

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

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

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

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

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

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

55 (C) (i) For purposes of clause (ii) of subparagraph (A) of this para-
56 graph, additions to the New York reserve for losses on qualifying real

1 property loans for the taxable year in which the distribution occurs
2 shall be taken into account.

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

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

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

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

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

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

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

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

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

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

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

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

39 (B) any taxpayer which ceases to be subject to tax under this part, or

40 (C) any other unusual circumstances,

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

51 (j) (1) For any taxable year beginning in nineteen hundred seventy-
52 three or for any period for which a tax is imposed under subdivision (b)
53 of section 11-639 of this part, entire net income shall be computed
54 without regard to the amount allowable as a deduction for bad debts or
55 an addition to a reserve for bad debts in computing federal taxable
56 income for the taxable year, but, in lieu thereof, a deduction shall be

1 allowed to the extent and in the manner authorized by subdivision five
2 of section 11-621 or subdivision (e) of section 11-629 of this subchap-
3 ter as if such provisions were set forth in full in this part and by
4 treating such provisions as applicable under this part.

5 (2) In the case of property placed in service prior to January first,
6 nineteen hundred seventy-three, for which the taxpayer properly adopted
7 a different method of computing depreciation under section 11-621 or
8 section 11-629 of this subchapter than was adopted for federal income
9 tax purposes with respect to such property, entire net income under this
10 part shall be computed without regard to the amount allowable as a
11 deduction for depreciation of such property in computing federal taxable
12 income for the taxable year but, in lieu thereof, shall be computed as
13 if such deduction were determined by the method of depreciation adopted
14 with respect to such property under section 11-621 or 11-629 of this
15 subchapter.

16 (3) In computing entire net income, the amount allowable as a
17 deduction for charitable contributions for federal income tax purposes
18 shall be: (a) increased for the first taxable year or period beginning
19 in nineteen hundred seventy-three by the amount of any contributions
20 made during such taxable year or period which were not allowable as a
21 deduction for charitable contributions for federal income tax purposes
22 for such taxable year or period because of an election pursuant to para-
23 graph two of subsection (a) of section one hundred seventy of the inter-
24 nal revenue code and which were not deductible in computing the tax due
25 under part one or two of this subchapter, and (b) decreased by any
26 amount allowed as a deduction for federal income tax purposes for the
27 taxable year under section one hundred seventy of the internal revenue
28 code as a carryover of excess contributions which are not made in such
29 taxable year and which were deductible in computing the tax due under
30 part one or two of this subchapter.

31 (4) There shall be excluded from the computation of entire net income
32 any amount allowed as a deduction for federal income tax purposes for
33 the taxable year under section twelve hundred twelve of the internal
34 revenue code as a capital loss carry forward to the taxable year, which
35 was deductible as a loss in computing the tax due under part one or two
36 of this subchapter.

37 (5) There shall be excluded from the computation of entire net income
38 the amount of any income or gain from the sale of real or personal prop-
39 erty which is includible in determining federal taxable income for the
40 taxable year pursuant to the installment method under section four
41 hundred fifty-three of the internal revenue code, to the extent that
42 such income or gain was includible in the computation of the tax due
43 under part one or two of this subchapter.

44 (6) To the extent not otherwise provided in this part, there shall be
45 excluded from entire net income the amount necessary to prevent the
46 taxation under this part of any other amount of income or gain which was
47 properly included in income or gain and was taxable under part one or
48 two of this subchapter and there shall be disallowed as a deduction in
49 computing entire net income any amount which was allowed as a deduction
50 in computing the tax due under such parts.

51 (k) (1) At the election of the taxpayer, there shall be deducted from
52 the portion of its entire net income allocated within the city, depreci-
53 ation with respect to any property such as described in paragraph two of
54 this subdivision, not exceeding twice the depreciation allowed with
55 respect to the same property for federal income tax purposes. Such
56 deduction shall be allowed only upon condition that entire net income be

1 computed without any deduction for depreciation or amortization of the
2 same property, and the total of all deductions allowed under parts one
3 and two of this subchapter three and this part in any taxable year or
4 years with respect to the depreciaton of any such property shall not
5 exceed its cost or other basis.

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

1 (3) If the deduction allowable for any taxable year pursuant to this
2 subdivision exceeds the portion of the taxpayer's entire net income
3 allocated to this city for such year, the excess may be carried over to
4 the following taxable year or years and may be deducted from the portion
5 of the taxpayer's entire net income allocated to this city for such year
6 or years.

7 (4) In any taxable year when property is sold or otherwise disposed
8 of, with respect to which a deduction has been allowed pursuant to this
9 subdivision, subdivision twelve of section 11-621 or subdivision (j) of
10 section 11-629 of this subchapter, the gain or loss entering into the
11 computation of federal taxable income shall be disregarded in computing
12 entire net income, and there shall be added or subtracted from the
13 portion of entire net income allocated within the city the gain or loss
14 upon such sale or other disposition. In computing such gain or loss the
15 basis of the property sold or disposed of shall be adjusted to reflect
16 the deduction allowed with respect to such property pursuant to para-
17 graph one of this subdivision. Provided, however, that no loss shall be
18 recognized for the purposes of this paragraph with respect to a sale or
19 other disposition of property to a person whose acquisition thereof is
20 not a purchase as defined in subdivision (d) of section one hundred
21 seventy-nine of the internal revenue code.

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

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

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

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

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

49 (k-2) Notwithstanding any other provision of this section to the
50 contrary, for taxable years beginning before January first, two thousand
51 twenty-one, any amendment to section one hundred seventy-two of the
52 internal revenue code made after March first, two thousand twenty shall
53 not apply to this part.

54 (1) If the period covered by a return under this part is other than
55 the period covered by the return to the United States treasury depart-
56 ment, entire net income and alternative entire net income shall be

1 determined by multiplying the taxable income reported to such depart-
2 ment, as adjusted pursuant to the provisions of this part, by the number
3 of calendar months or major parts thereof covered by the return under
4 this part and dividing by the number of calendar months or major parts
5 thereof covered by the return to such department. If it shall appear
6 that such method of determining entire net income or alternative entire
7 net income does not properly reflect the taxpayer's income during the
8 period covered by the return under this part, the commissioner of
9 finance shall be authorized in his or her discretion to determine such
10 entire net income or alternative entire net income solely on the basis
11 of the taxpayer's income during the period covered by its return under
12 this part.

13 (m) The commissioner of finance, may, whenever necessary in order to
14 properly reflect the entire net income of any taxpayer, determine the
15 year or period in which any item of income or deduction shall be
16 included, without regard to the method of accounting employed by the
17 taxpayer.

18 (n) Notwithstanding any other provision of this subchapter, for taxa-
19 ble years beginning on or after August first, two thousand two, in the
20 case of a taxpayer that is a partner in a partnership subject to the tax
21 imposed by chapter eleven of this title as a utility, as defined in
22 subdivision six of section 11-1101 of such chapter, entire net income
23 shall not include the taxpayer's distributive or pro rata share for
24 federal income tax purposes of any item of income, gain, loss or
25 deduction of such partnership, or any item of income, gain, loss or
26 deduction of such partnership that the taxpayer is required to take into
27 account separately for federal income tax purposes.

28 (n-1) for taxable years ending after September tenth, two thousand
29 one, in the case of qualified property described in paragraph two of
30 subsection k of section one hundred sixty-eight of the internal revenue
31 code, other than qualified resurgence zone property described in subdivi-
32 sion (p) of this section, and other than qualified New York Liberty
33 Zone property described in paragraph two of subsection b of section
34 fourteen hundred-L of the internal revenue code, without regard to
35 clause (i) of subparagraph (C) of such paragraph, a taxpayer shall be
36 allowed with respect to such property the depreciation deduction allow-
37 able under section one hundred sixty-seven as such section would have
38 applied to such property had it been acquired by the taxpayer on Septem-
39 ber tenth, two thousand one, provided, however, that for taxable years
40 beginning on or after January first, two thousand four, in the case of a
41 passenger motor vehicle or a sport utility vehicle subject to the
42 provisions of subdivision (r) of this section, the limitation under
43 clause (i) of subparagraph (A) of paragraph one of subdivision (a) of
44 section two hundred eighty-F of the internal revenue code applicable to
45 the amount allowed as a deduction under this paragraph shall be deter-
46 mined as of the date such vehicle was placed in service and not as of
47 September tenth, two thousand one.

48 (o) for taxable years ending after September tenth, two thousand one,
49 upon the disposition of property to which subdivision (n) of this
50 section applies, the amount of any gain or loss includible in entire net
51 income shall be adjusted to reflect the inclusions and exclusions from
52 entire net income pursuant to paragraph thirteen of subdivision (b) and
53 subdivision (n) of this section attributable to such property.

54 (p) for purposes of subdivisions (n) and (o) of this section, quali-
55 fied resurgence zone property shall mean qualified property described in
56 paragraph two of subsection k of section one hundred sixty-eight of the

1 internal revenue code substantially all of the use of which is in the
2 resurgence zone, as defined below, and is in the active conduct of a
3 trade or business by the taxpayer in such zone, and the original use of
4 which in the resurgence zone commences with the taxpayer after September
5 tenth, two thousand one. The resurgence zone shall mean the area of New
6 York county bounded on the south by a line running from the intersection
7 of the Hudson River with the Holland Tunnel, and running thence east to
8 Canal Street, then running along the centerline of Canal Street to the
9 intersection of the Bowery and Canal Street, running thence in a south-
10 easterly direction diagonally across Manhattan Bridge Plaza, to the
11 Manhattan Bridge, and thence along the centerline of the Manhattan
12 Bridge to the point where the centerline of the Manhattan Bridge would
13 intersect with the easterly bank of the East River, and bounded on the
14 north by a line running from the intersection of the Hudson River with
15 the Holland Tunnel and running thence north along West Avenue to the
16 intersection of Clarkson Street then running east along the centerline
17 of Clarkson Street to the intersection of Washington Avenue, then
18 running south along the centerline of Washington Avenue to the inter-
19 section of West Houston Street, then east along the centerline of West
20 Houston Street, then at the intersection of the Avenue of the Americas
21 continuing east along the centerline of East Houston Street to the east-
22 erly bank of the East River.

23 (q) Related members expense add back. (1) Definitions. (A) Related
24 member. "Related member" means a related person as defined in subpara-
25 graph (c) of paragraph three of subsection (b) of section four hundred
26 sixty-five of the internal revenue code, except that "fifty percent"
27 shall be substituted for "ten percent".

28 (B) Effective rate of tax. "Effective rate of tax" means, as to any
29 city, the maximum statutory rate of tax imposed by the city on or meas-
30 ured by a related member's net income multiplied by the apportionment
31 percentage, if any, applicable to the related member under the laws of
32 said jurisdiction. For purposes of this definition, the effective rate
33 of tax as to any city is zero where the related member's net income tax
34 liability in said city is reported on a combined or consolidated return
35 including both the taxpayer and the related member where the reported
36 transactions between the taxpayer and the related member are eliminated
37 or offset. Also, for purposes of this definition, when computing the
38 effective rate of tax for a city in which a related member's net income
39 is eliminated or offset by a credit or similar adjustment that is
40 dependent upon the related member either maintaining or managing intan-
41 gible property or collecting interest income in that city, the maximum
42 statutory rate of tax imposed by said city shall be decreased to reflect
43 the statutory rate of tax that applies to the related member as effec-
44 tively reduced by such credit or similar adjustment.

45 (C) Royalty payments. Royalty payments are payments directly connected
46 to the acquisition, use, maintenance or management, ownership, sale,
47 exchange, or any other disposition of licenses, trademarks, copyrights,
48 trade names, trade dress, service marks, mask works, trade secrets,
49 patents and any other similar types of intangible assets as determined
50 by the commissioner of finance, and include amounts allowable as inter-
51 est deductions under section one hundred sixty-three of the internal
52 revenue code to the extent such amounts are directly or indirectly for,
53 related to or in connection with the acquisition, use, maintenance or
54 management, ownership, sale, exchange or disposition of such intangible
55 assets.

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

9 (2) Royalty expense add backs. (A) For the purpose of computing entire
10 net income, a taxpayer must add back royalty payments directly or indi-
11 rectly paid, accrued, or incurred in connection with one or more direct
12 or indirect transactions with one or more related members during the
13 taxable year to the extent deductible in calculating federal taxable
14 income.

15 (B) Exceptions. (i) The adjustment required in this subdivision shall
16 not apply to the portion of the royalty payment that the taxpayer estab-
17 lishes, by clear and convincing evidence of the type and in the form
18 specified by the commissioner of finance, meets all of the following
19 requirements: (I) the related member was subject to tax in this city or
20 another city within the United States or a foreign nation or some combi-
21 nation thereof on a tax base that included the royalty payment paid,
22 accrued or incurred by the taxpayer; (II) the related member during the
23 same taxable year directly or indirectly paid, accrued or incurred such
24 portion to a person that is not a related member; and (III) the trans-
25 action giving rise to the royalty payment between the taxpayer and the
26 related member was undertaken for a valid business purpose.

27 (ii) The adjustment required in this subdivision shall not apply if
28 the taxpayer establishes, by clear and convincing evidence of the type
29 and in the form specified by the commissioner of finance, that: (I) the
30 related member was subject to tax on or measured by its net income in
31 this city or another city within the United States, or some combination
32 thereof; (II) the tax base for such tax included the royalty payment
33 paid, accrued or incurred by the taxpayer; and (III) the aggregate
34 effective rate of tax applied to the related member in those jurisdic-
35 tions is no less than eighty percent of the statutory rate of tax that
36 applied to the taxpayer under section 11-643.5 of this part for the
37 taxable year.

38 (iii) The adjustment required in this subdivision shall not apply if
39 the taxpayer establishes, by clear and convincing evidence of the type
40 and in the form specified by the commissioner of finance, that: (I) the
41 royalty payment was paid, accrued or incurred to a related member organ-
42 ized under the laws of a country other than the United States; (II) the
43 related member's income from the transaction was subject to a comprehen-
44 sive income tax treaty between such country and the United States; (III)
45 the related member was subject to tax in a foreign nation on a tax base
46 that included the royalty payment paid, accrued or incurred by the
47 taxpayer; (IV) the related member's income from the transaction was
48 taxed in such country at an effective rate of tax at least equal to that
49 imposed by this city; and (V) the royalty payment was paid, accrued or
50 incurred pursuant to a transaction that was undertaken for a valid busi-
51 ness purpose and using terms that reflect an arm's length relationship.

52 (iv) The adjustment required in this subdivision shall not apply if
53 the taxpayer and the commissioner of finance agree in writing to the
54 application or use of alternative adjustments or computations. The
55 commissioner of finance may, in his or her discretion, agree to the
56 application or use of alternative adjustments or computations when he or

1 she concludes that in the absence of such agreement the income of the
2 taxpayer would not be properly reflected.

3 (r) For taxable years beginning on or after January first, two thou-
4 sand four, in the case of a taxpayer that is not an eligible farmer as
5 defined in subsection (n) of section six hundred six of the tax law, a
6 taxpayer shall be allowed with respect to a sport utility vehicle that
7 is not a passenger automobile as defined in paragraph five of subsection
8 (d) of section two hundred eighty-F of the internal revenue code, the
9 deductions allowable under sections one hundred seventy-nine, one
10 hundred sixty-seven and one hundred sixty-eight of the internal revenue
11 code, determined as if such sport utility vehicle were a passenger auto-
12 mobile as defined in such paragraph five.

13 (s) Upon the disposition of property to which subdivision (r) of this
14 section applies, the amount of any gain or loss includible in entire net
15 income shall be adjusted to reflect the modification provided in such
16 subdivision attributable to such property.

17 (t) Entire net income shall not include the amount of any grant
18 received through either the COVID-19 pandemic small business recovery
19 grant program, pursuant to section sixteen-ff of the New York state
20 urban development corporation act, or the small business resilience
21 grant program administered by the department of small business services,
22 to the extent the amount of either such grant is included in federal
23 taxable income.

24 § 11-641.1 Computation of alternative entire net income. (a) Alterna-
25 tive entire net income means entire net income as determined pursuant to
26 section 11-641 of this part, except that the deductions described in
27 paragraphs eleven and twelve of subdivision (e) of section 11-641 of
28 this part shall not be allowed.

29 (b) Any election made pursuant to paragraph two of subdivision (b) of
30 section 11-642 of this part with respect to the modification provided
31 for in subdivision (f) of section 11-641 of this part shall be deemed to
32 have been made for purposes of computing alternative entire net income.

33 § 11-642 Allocation. (a) In general. If a taxpayer's entire net
34 income, alternative entire net income, or taxable assets are derived
35 from business carried on within and without the city, the taxpayer shall
36 for purposes of computing allocation percentages compute payroll,
37 receipts, and deposits percentages in accordance with the following
38 rules:

39 (1) The taxpayer shall ascertain the percentage which eighty percent
40 of the total wages, salaries and other personal service compensation
41 during the taxable year of employees within the city, except wages,
42 salaries and other personal service compensation of general executive
43 officers, bears to the total wages, salaries and other personal service
44 compensation during the taxable year of all the taxpayer's employees
45 within and without the city, except wages, salaries and other personal
46 service compensation of general executive officers.

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

49 (i) loans, including a taxpayer's portion of a participation in a
50 loan, and financing leases within the city, and all other business
51 receipts earned within the city, bear to

52 (ii) the total amount of the taxpayer's receipts from loans, including
53 a taxpayer's portion of a participation in a loan, and financing leases
54 and all other business receipts within and without the city.

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

4 (i) In the case of a taxpayer described in paragraph one, two, three,
5 four, five or seven of subdivision (a) of section 11-640 of this part, a
6 loan or financing lease attributed by such taxpayer to a branch without
7 the city shall be presumed to be properly so attributed provided that
8 such presumption may be rebutted if the commissioner of finance demon-
9 strates that the greater portion of income producing activity related to
10 the loan or financing lease did not occur at such branch. Where such
11 presumption has been rebutted, the loan or financing lease shall be
12 presumed to be within the city if the taxpayer had a branch within the
13 city at the time the loan or financing lease was made. The taxpayer may
14 rebut such presumption by demonstrating that the greater portion of
15 income producing activity related to the loan or financing lease did not
16 occur within the city. In the case of a loan or financing lease which is
17 recorded on the books of a place without the city which is not a branch,
18 it shall be presumed that the greater portion of income producing activ-
19 ity related to such loan or financing lease occurred within the city if
20 the taxpayer had a branch within the city at the time the loan or
21 financing lease was made. The taxpayer may rebut such presumption by
22 demonstrating that the greater portion of income producing activity
23 related to the loan or financing lease did not occur within the city.

24 (ii) In the case of a taxpayer described in paragraph six or nine of
25 subdivision (a) of section 11-640 of this part, a loan or financing
26 lease attributed by such taxpayer to a bona fide office without the city
27 shall be presumed to be properly so attributed provided that such
28 presumption may be rebutted if the commissioner of finance demonstrates
29 that the greater portion of income producing activity related to the
30 loan or financing lease did not occur without the city.

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

34 (D) (i) Interest, and fees and penalties in the nature of interest,
35 from bank, credit, travel and entertainment card receivables are earned
36 within the city if the mailing address of the card holder in the records
37 of the taxpayer is in the city; and

38 (ii) Service charges and fees from such cards are earned within the
39 city if the card is serviced in the city; and

40 (iii) Receipts from merchant discounts are earned within the city if
41 the merchant is located within the city.

42 (E) The portion of total net gains and other income from trading
43 activities, including but not limited to foreign exchange, options and
44 financial futures, and from investment activities which is attributed
45 within the city shall be ascertained by multiplying such total net gains
46 and other income by a fraction the numerator of which is the average
47 value of the trading assets and investment assets attributable to the
48 city and the denominator of which is the average value of all trading
49 and investment assets. A trading asset or investment asset is attribut-
50 able to the city if the greater portion of income producing activity
51 related to the trading asset or investment asset occurred within the
52 city.

53 (F) Fees or charges from the issuance of letters of credit, travelers
54 checks and money orders are earned within the city if such letters of
55 credit, travelers checks or money orders are issued within the city.

1 (G) Rules for receipts from certain services to investment companies.
2 (1) For taxable years beginning on or after January first, two thousand
3 one, the portion of receipts received from an investment company arising
4 from the sale of management, administration or distribution services to
5 such investment company determined in accordance with clause two of this
6 subparagraph shall be deemed to arise from services performed within the
7 city, such portion referred to herein as the Staten Island city portion.
8 (2) The Staten Island city portion shall be the product of (i) the
9 total of such receipts from the sale of such services and (ii) a frac-
10 tion. The numerator of that fraction is the sum of the monthly percent-
11 ages, as defined hereinafter, determined for each month of the invest-
12 ment company's taxable year for federal income tax purposes which
13 taxable year ends within the taxable year of the taxpayer, but excluding
14 any month during which the investment company had no outstanding shares.
15 The monthly percentage for each such month is determined by dividing (i)
16 the number of shares in the investment company which are owned on the
17 last day of the month by shareholders that are domiciled in the city by
18 (ii) the total number of shares in the investment company outstanding on
19 that date. The denominator of the fraction is the number of such monthly
20 percentages.
21 (3)(i) For purposes of this subparagraph, the term "domicile", in the
22 case of an individual, shall have the meaning as in chapter seventeen of
23 this title; an estate or trust is domiciled in the city if it is a city
24 resident estate or trust as defined in paragraph three of subdivision
25 (b) of section 11-1705 of this code; a business entity is domiciled in
26 the city if the location of the actual seat of management or control is
27 in the city. It shall be presumed that the domicile of a shareholder,
28 with respect to any month, is his, her or its mailing address on the
29 records of the investment company as of the last day of such month.
30 (ii) For purposes of this subparagraph, the term "investment company"
31 means a regulated investment company, as defined in section eight
32 hundred fifty-one of the internal revenue code, and a partnership to
33 which subdivision (a) of section seven thousand seven hundred four of
34 the internal revenue code applies, by virtue of paragraph three of
35 subdivision (c) of section seven thousand seven hundred four of such
36 code, and that meets the requirements of subdivision (b) of section
37 eight hundred fifty-one of such code. This shall be applied to the
38 taxable year for federal income tax purposes of the business entity that
39 is asserted to constitute an investment company that ends within the
40 taxable year of the taxpayer.
41 (iii) For purposes of this subparagraph, the term "receipts from an
42 investment company" includes amounts received directly from an invest-
43 ment company as well as amounts received from the shareholders in such
44 investment company in their capacity as such.
45 (iv) For purposes of this subparagraph, the term "management services"
46 means the rendering of investment advice to an investment company,
47 making determinations as to when sales and purchases of securities are
48 to be made on behalf of an investment company, or the selling or
49 purchasing of securities constituting assets of an investment company,
50 and related activities, but only where such activity or activities are
51 performed pursuant to a contract with the investment company entered
52 into pursuant to subdivision (a) of section fifteen of the federal
53 investment company act of nineteen hundred forty, as amended.
54 (v) For purposes of this subparagraph, the term "distribution
55 services" means the services of advertising, servicing investor
56 accounts, including redemptions, marketing shares or selling shares of

1 an investment company, but, in the case of advertising, servicing inves-
2 tor accounts, including redemptions, or marketing shares, only where
3 such service is performed by a person who is, or was, in the case of a
4 closed end company, also engaged in the service of selling such shares.
5 In the case of an open end company, such service of selling shares must
6 be performed pursuant to a contract entered into pursuant to subdivision
7 (b) of section fifteen of the federal investment company act of nineteen
8 hundred forty, as amended.

9 (vi) For purposes of this subparagraph, the term "administration
10 services" includes clerical, accounting, bookkeeping, data processing,
11 internal auditing, legal and tax services performed for an investment
12 company but only if the provider of such service or services during the
13 taxable year in which such service or services are sold also sells
14 management or distribution services, as defined in clause (v) of this
15 subparagraph, to such investment company.

16 (H) All receipts from the performance of services not described in
17 this paragraph are earned within the city if the services are performed
18 in the city. When a service is performed both within and without the
19 city, the receipts shall be allocated within and without the city in
20 accordance with rules and regulations of the commissioner of finance.

21 (I) All other receipts not described in subparagraphs (B) through (H)
22 of this paragraph shall be attributable within and without the city in
23 accordance with rules and regulations issued by the commissioner of
24 finance.

25 (3) The taxpayer shall ascertain the percentage which the average
26 value of deposits maintained at branches within the city during the
27 taxable year, bears to the average value of all the taxpayer's deposits
28 maintained at branches within and without the city during the taxable
29 year.

30 (4) Each percentage computed pursuant to this subsection shall be
31 computed on a cash or accrual basis according to the method of account-
32 ing used for the taxable year. The receipts percentage shall include
33 only receipts which are included in alternative entire net income for
34 the taxable year. The deposits and payroll percentages shall include
35 only deposits and payroll the expenses of which are included in the
36 computation of alternative entire net income for the taxable year.

37 (5) For purposes of this section:

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

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

47 (6) If it shall appear to the commissioner of finance that the allo-
48 cation percentage determined in subdivision (b), (c), or (d) of this
49 section does not properly reflect the activity, business, income or
50 assets of a taxpayer within the city, the commissioner of finance shall
51 be authorized in his discretion to adjust it by (1) excluding one or
52 more of the factors therein, (2) including one or more other factors, or
53 (3) any other similar or different method calculated to effect a fair
54 and proper allocation of the income or assets reasonably attributable to
55 the city.

1 (7) The commissioner of finance from time to time shall publish all
2 rulings of general public interest with respect to any application of
3 the provisions of paragraph six of this subdivision.

4 (b) Allocation of entire net income.

5 (1) If a taxpayer's entire net income is derived from business carried
6 on both within and without the city, the portion thereof which is
7 derived from business carried on within the city shall be determined by
8 multiplying its entire net income by the income allocation percentage
9 determined as follows: add the percentages ascertained under paragraphs
10 one, two and three of subdivision (a) of this section, plus an addi-
11 tional percentage equal to the receipts percentage ascertained under
12 paragraph two of such subdivision and an additional percentage equal to
13 the deposits percentage ascertained under paragraph three of such subdivi-
14 sion, and divide the result by the number of percentages so added
15 together.

16 (1-a) Notwithstanding the provisions of paragraph one of this subdivi-
17 sion, each banking corporation described in paragraph nine of subdivi-
18 sion (a) of section 11-640 of this part subject to the tax imposed by
19 this part that substantially provides management, administrative or
20 distribution services to an investment company, as such terms are
21 defined in subparagraph (G) of paragraph two of subdivision (a) of this
22 section, shall determine the portion of its entire net income derived
23 from business carried on within the city by multiplying such income by
24 an income allocation percentage obtained as follows:

25 (A) For taxable years beginning in two thousand nine, the income allo-
26 cation percentage shall be determined by adding together the following
27 percentages:

28 (i) the product of eighteen percent and the percentage determined
29 under paragraph one of subdivision (a) of this section,

30 (ii) the product of forty-six percent and the percentage determined
31 under paragraph two of subdivision (a) of this section, and

32 (iii) the product of thirty-six percent and the percentage determined
33 under paragraph three of subdivision (a) of this section.

34 (B) For taxable years beginning in two thousand ten, the income allo-
35 cation percentage shall be determined by adding together the following
36 percentages:

37 (i) the product of sixteen percent and the percentage determined under
38 paragraph one of subdivision (a) of this section,

39 (ii) the product of fifty-two percent and the percentage determined
40 under paragraph two of subdivision (a) of this section, and

41 (iii) the product of thirty-two percent and the percentage determined
42 under paragraph three of subdivision (a) of this section.

43 (C) For taxable years beginning in two thousand eleven, the income
44 allocation percentage shall be determined by adding together the follow-
45 ing percentages:

46 (i) the product of fourteen percent and the percentage determined
47 under paragraph one of subdivision (a) of this section,

48 (ii) the product of fifty-eight percent and the percentage determined
49 under paragraph two of subdivision (a) of this section, and

50 (iii) the product of twenty-eight percent and the percentage deter-
51 mined under paragraph three of subdivision (a) of this section.

52 (D) For taxable years beginning in two thousand twelve, the income
53 allocation percentage shall be determined by adding together the follow-
54 ing percentages:

55 (i) the product of twelve percent and the percentage determined under
56 paragraph one of subdivision (a) of this section,

1 (ii) the product of sixty-four percent and the percentage determined
2 under paragraph two of subdivision (a) of this section, and

3 (iii) the product of twenty-four percent and the percentage determined
4 under paragraph three of subdivision (a) of this section.

5 (E) For taxable years beginning in two thousand thirteen, the income
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

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

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

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

14 (F) For taxable years beginning in two thousand fourteen, the income
15 allocation percentage shall be determined by adding together the follow-
16 ing percentages:

17 (i) the product of eight percent and the percentage determined under
18 paragraph one of subdivision (a) of this section,

19 (ii) the product of seventy-six percent and the percentage determined
20 under paragraph two of subdivision (a) of this section, and

21 (iii) the product of sixteen percent and the percentage determined
22 under paragraph three of subdivision (a) of this section.

23 (G) For taxable years beginning in two thousand fifteen, the income
24 allocation percentage shall be determined by adding together the follow-
25 ing percentages:

26 (i) the product of six percent and the percentage determined under
27 paragraph one of subdivision (a) of this section,

28 (ii) the product of eighty-two percent and the percentage determined
29 under paragraph two of subdivision (a) of this section, and

30 (iii) the product of twelve percent and the percentage determined
31 under paragraph three of subdivision (a) of this section.

32 (H) For taxable years beginning in two thousand sixteen, the income
33 allocation percentage shall be determined by adding together the follow-
34 ing percentages:

35 (i) the product of four percent and the percentage determined under
36 paragraph one of subdivision (a) of this section,

37 (ii) the product of eighty-eight percent and the percentage determined
38 under paragraph two of subdivision (a) of this section, and

39 (iii) the product of eight percent and the percentage determined under
40 paragraph three of subdivision (a) of this section.

41 (I) For taxable years beginning in two thousand seventeen, the income
42 allocation percentage shall be determined by adding together the follow-
43 ing percentages:

44 (i) the product of two percent and the percentage determined under
45 paragraph one of subdivision (a) of this section,

46 (ii) the product of ninety-four percent and the percentage determined
47 under paragraph two of subdivision (a) of this section, and

48 (iii) the product of four percent and the percentage determined under
49 paragraph three of subdivision (a) of this section.

50 (J) For taxable years beginning after two thousand seventeen, the
51 income allocation percentage shall be the percentage determined under
52 paragraph two of subdivision (a) of this section.

53 (K) The commissioner shall promulgate rules necessary to implement the
54 provisions of this paragraph under such circumstances where any of the
55 percentages to be determined under paragraph one, two or three of subdi-

1 vision (a) of this section cannot be determined because the taxpayer has
2 no compensation, receipts or deposits within or without the city.

3 (2) (A) In lieu of the modification provided for in subdivision (f) of
4 section 11-641 of this part, relating to a modification for the adjusted
5 eligible net income of an international banking facility, a taxpayer
6 may, in the manner prescribed by the commissioner of finance, elect to
7 modify on an annual basis its income allocation percentage in the manner
8 described in clauses (i), (ii) and (iii) of this paragraph below:

9 (i) wages, salaries and other personal service compensation properly
10 attributable to the production of eligible gross income of the taxpay-
11 er's international banking facility shall not be included in the compu-
12 tation of wages, salaries and other personal service compensation of
13 employees within the city,

14 (ii) receipts properly attributable to the production of eligible
15 gross income of the taxpayer's international banking facility shall not
16 be included in the computation of receipts within the city, and

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

21 (B) For purposes of this paragraph, the term "eligible gross income"
22 refers to such term as set out in subdivision (f) of section 11-641 of
23 this part except that the term "foreign person" as defined in paragraph
24 eight of such subdivision (f) shall not include a foreign branch of the
25 taxpayer and in no event shall transactions between the taxpayer's
26 international banking facility and its foreign branches be considered.

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

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

38 (2) When an election has been made pursuant to paragraph two of subdivi-
39 sion (b) of this section, relating to international banking facili-
40 ties, the taxpayer shall make the modifications described in such para-
41 graph for purposes of its alternative entire net income allocation
42 percentage.

43 (d) Allocation of taxable assets. If the taxpayer's taxable assets are
44 derived from business carried on both within and without the city, the
45 portion thereof which is derived from business carried on within the
46 city shall be determined by multiplying its taxable assets by an asset
47 allocation percentage determined in the same manner as the income allo-
48 cation percentage under subdivision (b) of this section is determined
49 when the election provided for in paragraph two of such subdivision has
50 been made, except that the modifications described in clauses (i), (ii)
51 and (iii) of subparagraph (A) of such paragraph shall not be made.

52 § 11-643 Computation of tax for taxable years ending on or before
53 December thirty-first, nineteen hundred seventy-three. For taxable
54 years ending on or before December thirty-first, nineteen hundred seven-
55 ty-three, the tax imposed by section 11-639 of this part shall be the
56 greater of the following computations:

1 (a) Basic tax. Five and sixty-three one-hundredths percent of the
2 taxpayer's entire net income, or the portion thereof allocated to this
3 city, for the taxable year or part thereof.

4 (b) Alternative minimum tax. If the tax under subdivision (a) of this
5 section is less than any of the following amounts, the tax shall be the
6 largest of the following amounts:

7 (1) Except for a savings bank and savings and loan association, one
8 and one-quarter mills upon each dollar of such part of the taxpayer's
9 issued capital stock on the last day of the taxable year, at its face
10 value, but if such taxpayer has stock without par value, such stock
11 shall be taken at its actual or market value, and not less than five
12 dollars per share, as may be determined by the commissioner of finance,
13 as the gross income of such taxpayer derived from business carried on
14 within the city, during such taxable year, bears to its gross income
15 derived from all business, both within and without the city during said
16 year; except that if the period covered by the return is other than
17 twelve months, the tax shall be prorated on the basis of the number of
18 months or major portions thereof included in the return. For purposes of
19 this paragraph, the term "gross income" shall have the same meaning as
20 it has in the laws of the United States relating to federal income
21 taxes.

22 (2) For a savings bank and savings and loan association, one and
23 forty-three one-hundredths percent of the interest or dividends credited
24 by it to depositors or shareholders during the taxable year, provided
25 that, in determining such amount, each interest or dividend credit to a
26 depositor or shareholder shall be deemed to be the interest or dividend
27 actually credited or the interest or dividend which would have been
28 credited if it had been computed and credited at the rate of three and
29 one-half percent per annum, whichever is less.

30 (3) Twelve and one-half dollars.

31 § 11-643.1 Computation of tax for taxable years beginning on or after
32 January first, nineteen hundred seventy-four and ending on or before
33 December thirty-first, nineteen hundred seventy-four. For taxable years
34 beginning on or after January first, nineteen hundred seventy-four and
35 ending on or before December thirty-first, nineteen hundred seventy-
36 four, the tax imposed by section 11-639 of this part shall be the great-
37 er of the following computations:

38 (a) Basic tax. Six and seven hundred fifty-six one-thousandths
39 percent of the taxpayer's entire net income, or the portion thereof
40 allocated to this city, for the taxable year, or part thereof.

41 (b) Alternative minimum tax. If the tax under subdivision (a) of
42 this section is less than any of the following amounts, the tax shall be
43 the largest of the following amounts:

44 (1) Except for a savings bank and savings and loan association, one
45 and one-half mills upon each dollar of such part of the taxpayer's
46 issued capital stock on the last day of the taxable year, at its face
47 value, but if such taxpayer has stock without par value, such stock
48 shall be taken at its actual or market value, and not less than five
49 dollars per share, as may be determined by the commissioner of finance,
50 as the gross income of such taxpayer derived from business carried on
51 within the city, during such taxable year bears to its gross income
52 derived from all business, both within and without the city during said
53 year; except that if the period covered by the return is other than
54 twelve months, the tax shall be prorated on the basis of the number of
55 months or major portions thereof included in the return. For purposes
56 of this paragraph, the term "gross income" shall have the same meaning

1 as it has in the laws of the United States relating to federal income
2 taxes.

3 (2) For a savings bank and savings and loan association, one and seven
4 hundred sixteen one-thousandths percent of the interest or dividends
5 credited by it to depositors or shareholders during the taxable year,
6 provided that, in determining such amount, each interest or dividend
7 credit to a depositor or shareholder shall be deemed to be the interest
8 or dividend actually credited or the interest or dividend which would
9 have been credited if it had been computed and credited at the rate of
10 three and one-half percent per annum, whichever is less.

11 (3) Fifteen dollars.

12 § 11-643.2 Computation of tax for taxable years beginning in nineteen
13 hundred seventy-three and ending in nineteen hundred seventy-four. For
14 each taxable year beginning in nineteen hundred seventy-three and ending
15 in nineteen hundred seventy-four, two tentative taxes shall be computed,
16 the first as provided in section 11-643 and the second as provided in
17 section 11-643.1 of this part, and the tax for each such year shall be
18 the sum of that proportion of each tentative tax which the number of
19 days in nineteen hundred seventy-three and the number of days in nine-
20 teen hundred seventy-four, respectively, which fall within the taxable
21 year, bears to the number of days in the entire taxable year.

22 § 11-643.3 Computation of tax for taxable years beginning on or after
23 January first, nineteen hundred seventy-five and before January first,
24 nineteen hundred eighty-five. For taxable years beginning on or after
25 January first, nineteen hundred seventy-five and before January first,
26 nineteen hundred eighty-five, the tax imposed by section 11-639 of this
27 part shall be the greater of the following computations:

28 (a) Basic tax. (1) Except for a savings bank and savings and loan
29 association, thirteen and eight hundred twenty-three one-thousandths
30 percent of the taxpayer's entire net income, or the portion thereof
31 allocated to this city, for the taxable year, or part thereof.

32 (2) For a savings bank and savings and loan association, twelve and
33 one hundred thirty-four thousandths percent of the taxpayer's entire net
34 income, or the portion thereof allocated to this city, for the taxable
35 year, or part thereof.

36 (b) Alternative minimum tax. If the tax under subdivision (a) of
37 this section is less than any of the following amounts, the tax shall be
38 the largest of the following amounts:

39 (1) Except for a savings bank and savings and loan association, two
40 and six-tenths mills upon each dollar of such part of the taxpayer's
41 issued capital stock on the last day of the taxable year, at its face
42 value, but if such taxpayer has stock without par value, such stock
43 shall be taken at its actual or market value, and not less than five
44 dollars per share, as may be determined by the commissioner of finance,
45 as the gross income of such taxpayer derived from business carried on
46 within the city during such taxable year bears to its gross income
47 derived from all business, both within and without the city during said
48 year; except that if the period covered by the return is other than
49 twelve months, the tax shall be prorated on the basis of the number of
50 months or major portions thereof included in the return. For purposes
51 of this paragraph, the term "gross income" shall have the same meaning
52 as it has in the laws of the United States relating to federal income
53 taxes.

54 (2) Except as otherwise provided in paragraph three of this subdivi-
55 sion, for a savings bank and savings and loan association, two and five
56 hundred seventy-four one-thousandths percent of the interest or divi-

1 dends credited by it to depositors or shareholders during any taxable
2 year, provided that, in determining such amount, each interest or divi-
3 dend credit to a depositor or shareholder shall be deemed to be the
4 interest or dividend actually credited or the interest or dividend which
5 would have been credited if it had been computed and credited at the
6 rate of three and one-half percent per annum, whichever is less.

7 (3) (i) For a savings bank and savings and loan association, for any
8 quarterly accounting period in which such savings bank or savings and
9 loan association credits or pays dividends to its depositors or share-
10 holders on or after the first day of October, nineteen hundred eighty-
11 one but before the first day of July, nineteen hundred eighty-six, and
12 after such credit or payment the net worth of such savings bank or
13 savings and loan association is less than five percent of the amount due
14 depositors, one and eight hundred twenty-four one-thousandths percent of
15 the interest or dividends credited by it to a depositor or shareholder
16 during such accounting period, provided that, in determining such
17 amount, each interest or dividend credit to depositors or shareholders
18 shall be deemed to be the interest or dividend actually credited or the
19 interest or dividend which would have been credited if it had been
20 computed and credited at the rate of three and one-half percent per
21 annum, whichever is less. In determining the lesser of the amount of
22 interest or dividends actually credited to depositors or shareholders or
23 the amount of interest or dividends which would have been credited if
24 such interest or dividends had been computed and credited at the rate of
25 three and one-half percent per annum, the provisions of subparagraph
26 (ii) of this paragraph shall not be considered.

27 (ii) For purposes of the computation provided for in subparagraph (i)
28 of this paragraph, except where the tax computed under subparagraph (i)
29 of this paragraph is computed as if the interest or dividends were
30 computed and credited at the rate of three and one-half percent per
31 annum, that portion of the interest or dividends credited on or after
32 the first day of October, nineteen hundred eighty-one but before the
33 first day of July, nineteen hundred eighty-six by:

34 (A) a savings bank to a depositor or shareholder which is attributable
35 to an increase or a deemed increase in the gross earnings, surplus fund,
36 or net worth of the savings bank, which increase became available for
37 interest or dividends upon the prior written approval of the superinten-
38 dent of banks pursuant to the provisions of subdivision four of section
39 two hundred forty-four of the banking law; or

40 (B) a savings and loan association to a depositor or shareholder which
41 is attributable to an increase or a deemed increase in gross income,
42 undivided profits, surplus account or net worth of the savings and loan
43 association, which increase became available for interest or dividends
44 upon the prior written approval of the superintendent of banks pursuant
45 to the provisions of subdivision two of section three hundred eighty-
46 seven of the banking law; or

47 (C) a federal savings bank or a federal savings and loan association
48 to a depositor or shareholder, which would have required and received
49 prior written approval of the superintendent of banks in respect to
50 increases in gross income, gross earnings, undivided profits, surplus
51 funds, surplus accounts or net worth available for dividends pursuant to
52 the provisions of subdivision four of section two hundred forty-four of
53 the banking law and subdivision two of section three hundred eighty-sev-
54 en of the banking law, respectively, were the provisions of sections two
55 hundred forty-four and three hundred eighty-seven of the banking law
56 applicable to federal savings banks and federal savings and loan associ-

1 ations shall not be considered to have been credited to depositors or
2 shareholders. Where the tax computed under subparagraph (i) of this
3 paragraph is computed as if the interest or dividends were computed and
4 credited at the rate of three and one-half percent per annum, the amount
5 of interest or dividends which shall not be considered to have been
6 credited to depositors or shareholders is an amount which bears the same
7 ratio to the interest or dividends which would have been credited at the
8 rate of three and one-half percent per annum as the amount of that
9 portion of the interest or dividends paid or credited on or after the
10 first day of October, nineteen hundred eighty-one but before the first
11 day of July, nineteen hundred eighty-six, which is attributable to an
12 increase or deemed increase in gross income, gross earnings, undivided
13 profits, surplus funds, surplus account or net worth available for divi-
14 dends pursuant to the provisions of subdivision four of section two
15 hundred forty-four of the banking law or subdivision two of section
16 three hundred eighty-seven of the banking law, bears to the amount of
17 interest or dividends actually credited. For purposes of this clause,
18 the determination of whether a federal savings bank or federal savings
19 and loan association would have required and received prior written
20 approval of the superintendent of banks shall be made by the superinten-
21 dent of banks, upon application and upon such forms as he or she may
22 require, by applying the provision of subdivision four of section two
23 hundred forty-four of the banking law, as if such provisions were appli-
24 cable to federal savings banks, and subdivision two of section three
25 hundred eighty-seven of the banking law, as if such provisions were
26 applicable to federal savings and loan associations, and the superinten-
27 dent of banks may require and examine such information as he or she may
28 deem necessary to make such determinations.

29 (4) (i) Except for a savings bank and savings and loan association,
30 twenty-five dollars.

31 (ii) For a savings bank and savings and loan association, twenty
32 dollars.

33 § 11-643.4 Computation of tax for taxable years beginning in nineteen
34 hundred seventy-four and ending in nineteen hundred seventy-five. For
35 each taxable year beginning in nineteen hundred seventy-four and ending
36 in nineteen hundred seventy-five, two tentative taxes shall be computed,
37 the first as provided in section 11-643.1 and the second as provided in
38 section 11-643.3 of this part, and the tax for each such year shall be
39 the sum of that proportion of each tentative tax which the number of
40 days in nineteen hundred seventy-four and the number of days in nineteen
41 hundred seventy-five, respectively, which fall within the taxable year,
42 bears to the number of days in the entire taxable year.

43 § 11-643.5 Computation of tax for taxable years beginning on or after
44 January first, nineteen hundred eighty-five. For taxable years beginning
45 on or after January first, nineteen hundred eighty-five, the tax imposed
46 by section 11-639 of this part shall be the greater of the following
47 computations:

48 (a) Basic tax. Nine percent of the taxpayer's entire net income, or
49 the portion thereof allocated to the city, for the taxable year or part
50 thereof.

51 (b) Alternative minimum tax. If the tax under subdivision (a) of this
52 section is less than any of the following amounts, the tax shall be the
53 larger of the following amounts:

54 (1) For taxable years beginning before two thousand eleven, except in
55 the case of a corporation organized under the laws of a country other
56 than the United States, one-tenth of a mill upon each dollar of taxable

1 assets, or the portion thereof allocated to the city. For taxable years
2 beginning after two thousand ten, except in the case of a taxpayer
3 described in clause (i), (ii), or (iii) of this subparagraph, one-tenth
4 of a mill upon each dollar of taxable assets, or the portion thereof
5 allocated to the city.

6 (i) In the case of a taxpayer whose net worth ratio is less than five
7 percent but greater than or equal to four percent and whose total assets
8 are comprised of thirty-three percent or more of mortgages, one-twenty-
9 fifth of a mill upon each dollar of taxable assets, or the portion ther-
10 eof allocated to the city.

11 (ii) In the case of a taxpayer whose net worth ratio is less than four
12 percent and whose total assets are comprised of thirty-three percent or
13 more of mortgages, one-fiftieth of a mill upon each dollar of taxable
14 assets, or the portion thereof allocated to the city.

15 (iii) A taxpayer, whether or not a qualified institution as defined in
16 subparagraph (B) of paragraph five of subsection (f) of section four
17 hundred six of the federal national housing act, as amended, or as
18 defined in paragraph two of subsection (i) of section thirteen of the
19 federal deposit insurance act, as amended, shall not be subject to the
20 provisions of this paragraph for that portion of the taxable year in
21 which it had outstanding net worth certificates issued in accordance
22 with paragraph five of subsection (f) of section four hundred six of the
23 federal national housing act, as amended, or issued in accordance with
24 subsection (i) of section thirteen of the federal deposit insurance act,
25 as amended.

26 (iv) For the purposes of this part: (A) the term "taxable assets"
27 shall mean the average value of total assets reduced by any amount of
28 money or other property received from or attributable to amounts
29 received from the federal deposit insurance corporation pursuant to
30 subsection (c) of section thirteen of the federal deposit insurance act,
31 as amended, or the federal savings and loan insurance corporation pursu-
32 ant to paragraph one, two, three or four of subsection (f) of section
33 four hundred six of the federal national housing act, as amended. Total
34 assets are those assets which are properly reflected on a balance sheet
35 the income or expenses of which are properly reflected, or would have
36 been properly reflected if not fully depreciated or expensed or depreci-
37 ated or expensed to a nominal amount, in the computation of alternative
38 entire net income for the taxable year or in the computation of the
39 eligible net income of the taxpayer's international banking facility for
40 the taxable year.

41 (B) The term "net worth ratio" shall mean the percentage of net worth
42 to assets on the last day of the taxable year. The term "net worth"
43 means the sum of preferred stock, common stock, surplus, capital
44 reserves, undivided profits, mutual capital certificates, reserve for
45 contingencies, reserve for loan losses and reserve for security losses
46 minus assets classified loss. The term "assets" means the sum of mort-
47 gage loans, nonmortgage loans, repossessed assets, real estate held for
48 development or investment or resale, cash, deposits, investment securi-
49 ties, fixed assets and other assets, such as financial futures, goodwill
50 and other intangible assets, minus assets classified loss. In no event
51 shall assets be reduced by reserves for losses.

52 (C) The term "mortgages" shall mean loans secured by real property
53 within or without the state, participations in and securities collater-
54 alized by pools of residential mortgages, whether or not issued or guar-
55 anteed by a United States government agency, and loans secured by stock
56 in a cooperative housing corporation. The percentage of total assets

1 comprised of mortgages shall be an amount equal to the ratio of the
2 average of the four quarterly balances of such mortgages ending within
3 the taxable year, to the average of the four quarterly balances of all
4 assets ending within the taxable year. Such quarterly balances shall be
5 computed in the same manner as the report of condition required for
6 federal deposit insurance corporation or federal savings and loan insur-
7 ance corporation purposes, whether or not such report is required. For
8 taxable periods of less than one year, the taxpayer shall compute such
9 ratio using the number of such quarterly balances ending within such
10 taxable period.

11 (2) For taxable years beginning before two thousand eleven, in the
12 case of a corporation organized under the laws of a country other than
13 the United States, (i) two and six-tenths mills upon each dollar of such
14 part of the taxpayer's issued capital stock on the last day of the taxa-
15 ble year, at its face value, but if such taxpayer has stock without par
16 value, such stock shall be taken at its actual or market value, and not
17 less than five dollars per share, as may be determined by the commis-
18 sioner of finance, or (ii) if the taxpayer does not have issued capital
19 stock, two and six-tenths mills upon each dollar of such part of the
20 amount by which its average total assets exceeds its average total
21 liabilities, as the gross income of such taxpayer derived from business
22 carried on within the city during such taxable year bears to its gross
23 income derived from all business, both within and without the city
24 during said year; except that if the period covered by the return is
25 other than twelve months, the tax shall be prorated on the basis of the
26 number of months or major portions thereof included in the return. For
27 purposes of this paragraph, the term "gross income" shall have the same
28 meaning as it has in the laws of the United States relating to federal
29 income taxes.

30 (3) Three percent of the taxpayer's alternative entire net income, or
31 portion thereof allocated to the city, for the taxable year, or part
32 thereof.

33 (4) One hundred twenty-five dollars.

34 § 11-643.7. Relocation and employment assistance credit. (a) In addi-
35 tion to any other credit allowed by this part, a taxpayer that has
36 obtained the certifications required by chapter six-B of title twenty-
37 two of the code of the preceding municipality shall be allowed a credit
38 against the tax imposed by this part. The amount of the credit shall be
39 the amount determined by multiplying five hundred dollars or, in the
40 case of a taxpayer that has obtained pursuant to chapter six-B of such
41 title twenty-two a certification of eligibility dated on or after July
42 first, nineteen hundred ninety-five, one thousand dollars or, in the
43 case of an eligible business that has obtained pursuant to chapter six-B
44 of such title twenty-two a certification of eligibility dated on or
45 after July first, two thousand, for a relocation to eligible premises
46 located within a revitalization area defined in subdivision (n) of
47 section 22-621 of the code of the preceding municipality, three thousand
48 dollars, by the number of eligible aggregate employment shares main-
49 tained by the taxpayer during the taxable year with respect to partic-
50 ular premises to which the taxpayer has relocated; provided, however,
51 with respect to a relocation for which no application for a certificate
52 of eligibility is submitted prior to July first, two thousand three to
53 eligible premises that are not within a revitalization area, if the date
54 of such relocation as determined pursuant to subdivision (j) of section
55 22-621 of the code of the preceding municipality is before July first,
56 nineteen hundred ninety-five, the amount to be multiplied by the number

1 of eligible aggregate employment shares shall be five hundred dollars,
2 and with respect to a relocation for which no application for a certifi-
3 cate of eligibility is submitted prior to July first, two thousand
4 three, to eligible premises that are within a revitalization area, if
5 the date of such relocation as determined pursuant to subdivision (j) of
6 such section is before July first, nineteen hundred ninety-five, the
7 amount to be multiplied by the number of eligible aggregate employment
8 shares shall be five hundred dollars, and if the date of such relocation
9 as determined pursuant to subdivision (j) of such section is on or after
10 July first, nineteen hundred ninety-five, and before July first, two
11 thousand, one thousand dollars; provided, however, that no credit shall
12 be allowed for the relocation of any retail activity or hotel services;
13 and provided that in the case of an eligible business that has obtained
14 pursuant to chapter six-B of such title twenty-two certifications of
15 eligibility for more than one relocation, the portion of the total
16 amount of eligible aggregate employment shares to be multiplied by the
17 dollar amount specified in this subdivision for each such certification
18 of a relocation shall be the number of total attributed eligible aggre-
19 gate employment shares determined with respect to such relocation pursu-
20 ant to subdivision (o) of section 22-621 of the code of the preceding
21 municipality. For purposes of this section, the terms "eligible aggre-
22 gate employment shares," "relocate," "retail activity" and "hotel
23 services" shall have the meanings ascribed by section 22-621 of the code
24 of the preceding municipality.

25 (b) The credit allowed under this section with respect to eligible
26 aggregate employment shares maintained with respect to particular prem-
27 ises to which the taxpayer has relocated shall be allowed for the first
28 taxable year during which such eligible aggregate employment shares are
29 maintained with respect to such premises and for any of the twelve
30 succeeding taxable years during which eligible aggregate employment
31 shares are maintained with respect to such premises; provided that the
32 credit allowed for the twelfth succeeding taxable year shall be calcu-
33 lated by multiplying the number of eligible aggregate employment shares
34 maintained with respect to such premises in the twelfth succeeding taxa-
35 ble year by the lesser of one and a fraction the numerator of which is
36 such number of days in the taxable year of relocation less the number of
37 days the eligible business maintained employment shares in the eligible
38 premises in the taxable year of relocation and the denominator of which
39 is the number of days in such twelfth succeeding taxable year during
40 which such eligible aggregate employment shares are maintained with
41 respect to such premises. Except as provided in subdivision (d) of this
42 section, if the amount of the credit allowable under this section for
43 any taxable year exceeds the tax imposed for such year, the excess may
44 be carried over, in order, to the five immediately succeeding taxable
45 years and, to the extent not previously deductible, may be deducted from
46 the taxpayer's tax for such years.

47 (c) The credit allowable under this section shall be deducted after
48 the credit allowed by section 11-643.8, but prior to the deduction of
49 any other credit allowed by this part.

50 (d) In the case of a taxpayer that has obtained a certification of
51 eligibility pursuant to chapter six-B of title twenty-two of the code of
52 the preceding municipality dated on or after July first, two thousand
53 for a relocation to eligible premises located within the revitalization
54 area defined in subdivision (n) of section 22-621 of the code of the
55 preceding municipality, the credits allowed under this section, or in
56 the case of a taxpayer that has relocated more than once, the portion of

1 such credits attributed to such certification of eligibility pursuant to
2 subdivision (a) of this section, against the tax imposed by this chapter
3 for the taxable year of such relocation and for the four taxable years
4 immediately succeeding the taxable year of such relocation, shall be
5 deemed to be overpayments of tax by the taxpayer to be credited or
6 refunded, without interest, in accordance with the provisions of section
7 11-677 of this chapter. For such taxable years, such credits or portions
8 thereof may not be carried over to any succeeding taxable year;
9 provided, however, that this subdivision shall not apply to any relo-
10 cation for which an application for a certification of eligibility was
11 not submitted prior to July first, two thousand three, unless the date
12 of such relocation is on or after July first, two thousand.

13 § 11-643.8 Credit relating to certain distributions from partnerships.
14 (a) If a banking corporation is a partner in an unincorporated business
15 taxable under chapter five of this title, and is required to include in
16 entire net income its distributive share of income, gain, loss and
17 deductions of, or guaranteed payments from, such unincorporated busi-
18 ness, such banking corporation shall be allowed a credit against the tax
19 imposed by this part equal to the lesser of the amounts determined in
20 paragraphs one and two of this subdivision:

21 (1) The amount determined in this paragraph is the product of (A) the
22 sum of (i) the tax imposed by chapter five of this title on the unincor-
23 porated business for its taxable year ending within or with the taxable
24 year of the banking corporation and paid by the unincorporated business
25 and (ii) the amount of any credit or credits taken by the unincorporated
26 business under section 11-503 of this title, except the credit allowed
27 by subdivision (b) of such section, for its taxable year ending within
28 or with the taxable year of the banking corporation, to the extent that
29 such credits do not reduce such unincorporated business's tax below
30 zero, and (B) a fraction, the numerator of which is the net total of the
31 banking corporation's distributive share of income, gain, loss and
32 deductions of, and guaranteed payments from, the unincorporated business
33 for such taxable year and the denominator of which is the sum, for such
34 taxable year, of the net total distributive shares of income, gain, loss
35 and deductions of, and guaranteed payments to, all partners of the unin-
36 corporated business for whom or which such net total, as separately
37 determined for each partner, is greater than zero.

38 (2) The amount determined in this paragraph is the product of (A) the
39 excess of (i) the basic tax computed pursuant to subdivision (a) of
40 section 11-643.5 of this part, without allowance of any credits allowed
41 by this part, over (ii) the basic tax so computed, determined as if the
42 banking corporation had no such distributive share or guaranteed
43 payments with respect to the unincorporated business, and (B) a frac-
44 tion, the numerator of which is four and the denominator of which is
45 nine, provided, however, that the amounts computed in clauses (i) and
46 (ii) of this paragraph shall be computed with the following modifica-
47 tions:

48 (I) if, prior to taking into account any distributive share or guaran-
49 teed payments from any unincorporated business, the entire net income of
50 the partner is less than zero, such entire net income shall be treated
51 as zero; and

52 (II) if such partner's net total distributive share of income, gain,
53 loss and deductions of, and guaranteed payments from any unincorporated
54 business is less than zero, such net total shall be treated as zero.

55 The amount determined in this paragraph shall not be less than zero.

1 (b) (1) Notwithstanding anything to the contrary in subdivision (a) of
2 this section, in the case of a banking corporation that, before the
3 application of this section or any other credit allowed by this part, is
4 liable for the basic tax computed under subdivision (a) of section
5 11-643.5 of this part, the credit or the sum of the credits that may be
6 taken by such banking corporation for a taxable year under this section
7 with respect to an unincorporated business or unincorporated businesses
8 in which it is a partner shall not exceed the tax so computed, without
9 allowance of any credits allowed by this part, multiplied by a fraction
10 the numerator of which is four and the denominator of which is nine. If
11 the credit allowed under this subdivision or the sum of such credits
12 exceeds the product of such tax and such fraction, the amount of the
13 excess may be carried forward, in order, to each of the seven immediate-
14 ly succeeding taxable years and, to the extent not previously taken,
15 shall be allowed as a credit in each of such years. In applying such
16 provisions, the credit determined for the taxable year under subdivision
17 (a) of this section shall be taken before taking any credit carryforward
18 pursuant to this paragraph and the credit carryforward attributable to
19 the earliest taxable year shall be taken before taking a credit carry-
20 forward attributable to a subsequent taxable year.

21 (2) Notwithstanding anything to the contrary in subdivision (a) of
22 this section, in the case of a banking corporation that, before the
23 application of this section or any other credit allowed by this part, is
24 liable for the alternative minimum tax on alternative entire net income
25 under paragraph three of subdivision (b) of section 11-643.5 of this
26 part, the maximum credit that may be taken in any taxable year is the
27 amount that will reduce the tax so computed, without allowance of any
28 credits allowed by this part, to zero. For purposes of this paragraph
29 each dollar of credit shall be applied so as to reduce such tax by
30 seventy-five cents. If the amount of credit allowed under this section
31 or the sum of such credits exceeds the amount that may be taken against
32 such tax, the amount of the excess may be carried forward, in order, to
33 each of the seven immediately succeeding taxable years and, to the
34 extent not previously taken, shall be allowed as a credit in each of
35 such years. In applying such provisions, the credit determined for the
36 taxable year under subdivision (a) of this section shall be taken before
37 taking any credit carryforward pursuant to this subdivision and the
38 credit carryforward attributable to the earliest taxable year shall be
39 taken before taking a credit carryforward attributable to a subsequent
40 taxable year.

41 (3) No credit under this section may be taken in a taxable year by a
42 taxpayer that, in the absence of such credit, would be liable for the
43 tax computed on the basis of taxable assets under paragraph one of this
44 subdivision, the tax computed on the basis of issued capital stock under
45 paragraph two of this subdivision or the fixed-dollar minimum tax under
46 paragraph four of subdivision (b) of section 11-643.5 of this part.

47 (c) For banking corporations that file a report on a combined basis
48 pursuant to subdivision (f) of section 11-646 of this part, the credit
49 allowed by this section shall be computed as if the combined group were
50 the partner in each unincorporated business from which any of the
51 members of such group had a distributive share or guaranteed payments,
52 provided, however, if more than one member of the combined group is a
53 partner in the same unincorporated business, for purposes of the calcu-
54 lation required in paragraph one of subdivision (a) of this section, the
55 numerator of the fraction described in subparagraph (B) of such para-
56 graph one shall be the sum of the net total distributive shares of

1 income, gain, loss and deductions of, and guaranteed payments from, the
2 unincorporated business of all of the partners of the unincorporated
3 business within the combined group for which such net total, as sepa-
4 rately determined for each partner, is greater than zero, and the denom-
5 inator of such fraction shall be the sum of the net total distributive
6 shares of income, gain, loss and deductions of, and guaranteed payments
7 from, the unincorporated business of all partners in the unincorporated
8 business for whom or which such net total, as separately determined for
9 each partner, is greater than zero.

10 (d) The credit allowed by this section shall not be allowed to a part-
11 ner in an unincorporated business with respect to any tax paid by the
12 unincorporated business under chapter five of this title for any taxable
13 year beginning before July first, nineteen hundred ninety-four.

14 (e) Notwithstanding any other provisions of this part, the credit
15 allowable under this section shall be taken prior to the taking of any
16 other credit allowed by this part. Notwithstanding any other provisions
17 of this part, the application of this section shall not change the basis
18 on which the taxpayer's tax is computed under subdivision (a) or (b) of
19 section 11-643.5 of this part.

20 § 11-644 Declarations of estimated tax. (a) Requirements of declara-
21 tion. Every taxpayer subject to the tax imposed by subdivision (a) of
22 section 11-639 of this part shall make a declaration of its estimated
23 tax for the current taxable year, containing such information as the
24 commissioner of finance may prescribe by regulations or instructions, if
25 such estimated tax can reasonably be expected to exceed one thousand
26 dollars.

27 (b) Definition of estimated tax. The term "estimated tax" means the
28 amount which a taxpayer estimates to be the tax imposed by subdivision
29 (a) of section 11-639 of this part for the current taxable year, less
30 the amount which it estimates to be the sum of any credits allowable
31 against the tax.

32 (c) Time for filing declaration. A declaration of estimated tax shall
33 be filed on or before June fifteenth of the current taxable year in the
34 case of a taxpayer which reports on the basis of a calendar year, except
35 that if the requirements of subdivision (a) of this section are first
36 met:

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

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

43 (d) Amendments of declaration. A taxpayer may amend a declaration
44 under regulations of the commissioner of finance.

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

50 (1) such return shall be considered as its declaration if no declara-
51 tion was required to be filed during the taxable year for which the tax
52 was imposed, but is otherwise required to be filed on or before December
53 fifteenth pursuant to paragraph two of subdivision (c) of this section,
54 and

55 (2) such return shall be considered as the amendment permitted by
56 subdivision (d) of this section to be filed on or before December

1 fifteenth if the tax shown on the return is greater than the estimated
2 tax shown on a declaration previously made.

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

6 (g) Short taxable period. If the taxable period for which a tax is
7 imposed by subdivision (a) of section 11-639 of this part is less than
8 twelve months, every taxpayer required to make a declaration of esti-
9 mated tax for such taxable period shall make such a declaration in
10 accordance with regulations of the commissioner of finance.

11 (h) Extension of time. The commissioner of finance may grant a
12 reasonable extension of time, not to exceed three months, for the filing
13 of any declaration required pursuant to this section, on such terms and
14 conditions as the commissioner may require.

15 § 11-645 Payments of estimated tax. (a) Every taxpayer subject to
16 the tax imposed by section 11-639 of this part shall pay an amount equal
17 to twenty-five percent of the preceding year's tax, if such preceding
18 year's tax exceeded one thousand dollars. Such amount shall be paid
19 with the return required to be filed for the preceding taxable year or
20 with an application for the extension of the time for filing such
21 return. Provided, however, that for the first taxable year or period
22 commencing on or after January first, nineteen hundred seventy-three,
23 the installment required by this subdivision shall be paid with the
24 return required to be filed for the tax imposed pursuant to part one or
25 two of this subchapter three computed on the basis of net income for the
26 calendar year nineteen hundred seventy-two, or under the minimum tax
27 provisions of section 11-612 of this subchapter.

28 (b) Other installments. The estimated tax for each taxable year with
29 respect to which a declaration of estimated tax is required to be filed
30 under this part shall be paid, in the case of a taxpayer which reports
31 on the basis of a calendar year, as follows:

32 (1) If the declaration is filed on or before June fifteenth, the esti-
33 mated tax shown thereon, after applying thereto the amount, if any, paid
34 during the same taxable year pursuant to subdivision (a) of this
35 section, shall be paid in three equal installments. One of such
36 installments shall be paid at the time of the filing of the declaration,
37 one shall be paid on the following September fifteenth, and one on the
38 following December fifteenth.

39 (2) If the declaration is filed after June fifteenth and not after
40 September fifteenth of such taxable year, and is not required to be
41 filed on or before June fifteenth of such year, the estimated tax shown
42 on such declaration, after applying thereto the amount, if any, paid
43 during the same taxable year pursuant to subdivision (a) of this
44 section, shall be paid in two equal installments. One of such install-
45 ments shall be paid at the time of the filing of the declaration and one
46 shall be paid on the following December fifteenth.

47 (3) If the declaration is filed after September fifteenth of such
48 taxable year, and is not required to be filed on or before September
49 fifteenth of such year, the estimated tax shown on such declaration,
50 after applying thereto the amount, if any, paid in respect of such year
51 pursuant to subdivision (a) of this section, shall be paid in full at
52 the time of the filing of the declaration.

53 (4) If the declaration is filed after the time prescribed therefor,
54 or after the expiration of any extension of time therefor, paragraphs
55 two and three of this subdivision shall not apply and there shall be
56 paid at the time of such filing all installments of estimated tax paya-

1 ble at or before such time, and the remaining installments shall be paid
2 at the times at which, and in the amounts in which, they would have been
3 payable if the declaration had been filed when due.

4 (c) Amendments of declarations. If any amendment of a declaration is
5 filed, the remaining installments, if any, shall be ratably increased or
6 decreased, as the case may be, to reflect any increase or decrease in
7 the estimated tax by reason of such amendment, and if any amendment is
8 made after September fifteenth of the taxable year, any increase in the
9 estimated tax by reason thereof shall be paid at the time of making such
10 amendment.

11 (d) Application of installments based on the preceding year's tax.
12 Any amount paid pursuant to subdivision (a) of this section shall be
13 applied as a first installment against the estimated tax of the taxpayer
14 for the taxable year shown on the declaration required to be filed
15 pursuant to section 11-644 of this part, or if no declaration of esti-
16 mated tax is required to be filed by the taxpayer pursuant to such
17 section, any such amount shall be considered a payment on account of the
18 tax shown on the return required to be filed by the taxpayer for such
19 taxable year.

20 (e) Interest on certain installments based on the preceding year's
21 tax. Notwithstanding the provisions of section 11-679 of this chapter or
22 of section three-a of the general municipal law, if an amount paid
23 pursuant to subdivision (a) of this section exceeds the tax shown on the
24 return required to be filed by the taxpayer for the taxable year during
25 which the amount was paid, interest shall be allowed and paid on the
26 amount by which the amount so paid pursuant to such subdivision exceeds
27 such tax, at the overpayment rate set by the commissioner of finance
28 pursuant to section 11-687 of this chapter, or, if no rate is set, at
29 the rate of six percent per annum from the date of payment of the amount
30 so paid pursuant to such subdivision to the fifteenth day of the third
31 month following the close of the taxable year, provided, however, that
32 no interest shall be allowed or paid under this subdivision if the
33 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 subdivi-
36 sion (a) of section 11-639 of this part for the preceding taxable
37 year, or, for purposes of computing the first installment of estimated
38 tax when an application has been filed for extension of the time for
39 filing the return required to be filed for such preceding taxable year,
40 the amount properly estimated pursuant to paragraph one of subdivision b
41 of section 11-647 of this part as the tax imposed upon the taxpayer for
42 such taxable year. Provided, however, that for the first taxable year
43 or period commencing on or after January first, nineteen hundred seven-
44 ty-three, the term "preceding year's tax" as used in this section shall
45 mean the tax imposed upon the taxpayer pursuant to part one or two of
46 this subchapter three which was computed on the basis of net income for
47 the calendar year nineteen hundred seventy-two, or under the minimum tax
48 provisions of subdivision two of section 11-612 of this subchapter, or
49 for purposes of computing the first installment of estimated tax for
50 such first taxable year or period when an application has been filed for
51 an extension of the time for filing the return required to be filed for
52 the tax imposed pursuant to part one or two of this subchapter three
53 which was computed on the basis of net income for the calendar year
54 nineteen hundred seventy-two, or under the minimum tax provisions of
55 section 11-612 of this subchapter, the amount of tax properly estimated

1 for purposes of such part one or two pursuant to section 11-635 of this
2 subchapter.

3 (g) Application to short taxable period. This section shall apply to
4 a taxable period of less than twelve months in accordance with regu-
5 lations of the commissioner of finance.

6 (h) Fiscal year. The provisions of this section shall apply to taxa-
7 ble years of twelve months other than a calendar year by the substi-
8 tution of the months of such fiscal year for the corresponding months
9 specified in such provisions.

10 (i) Extension of time. The commissioner of finance may grant a
11 reasonable extension of time, not to exceed six months, for payment of
12 any installment of estimated tax required pursuant to this section, on
13 such terms and conditions as the commissioner may require, including the
14 furnishing of a bond or other security by the taxpayer in an amount not
15 exceeding twice the amount for which any extension of time for payment
16 is granted, provided, however that interest at the underpayment rate set
17 by the commissioner of finance pursuant to section 11-687 of this chap-
18 ter, or, if no rate is set, at the rate of seven and one-half percent
19 per annum for the period of the extension shall be charged and collected
20 on the amount for which any extension of time for payment is granted
21 under this subdivision.

22 (j) Payment of installments in advance. A taxpayer may elect to pay
23 any installment of estimated tax prior to the date prescribed in this
24 section for payment thereof.

25 § 11-646 Returns. (a) Every taxpayer shall annually on or before
26 the fifteenth day of the third month following the close of each of its
27 taxable years transmit to the commissioner of finance a return in a form
28 prescribed by the commissioner setting forth such information as the
29 commissioner of finance may prescribe and every taxpayer which ceases to
30 exercise its franchise in the city or to be subject to the tax imposed
31 by this part shall transmit to the commissioner of finance a return on
32 the date of such cessation or at such other time as the commissioner of
33 finance may require covering each year or period for which no return was
34 therefore filed.

35 (b) Every taxpayer shall also transmit such other returns and such
36 facts and information as the commissioner of finance may require in the
37 administration of this part.

38 (c) The commissioner of finance may grant a reasonable extension of
39 time for filing returns whenever good cause exists. An automatic exten-
40 sion of six months for the filing of its annual return shall be allowed
41 any taxpayer, if within the time prescribed by subdivision (a) of this
42 section, such taxpayer files with the commissioner of finance an appli-
43 cation for extension in such form as said commissioner of finance may
44 prescribe by regulation and pays on or before the date of such filing
45 the amount properly estimated as its tax.

46 (d) Every return shall have annexed thereto a certification by the
47 president, vice president, treasurer, assistant treasurer, chief
48 accounting officer or any other officer of the taxpayer duly authorized
49 so to act to the effect that the statements contained therein are true.
50 The fact that an individual's name is signed on a certification of the
51 return shall be prima facie evidence that such individual is authorized
52 to sign and certify the return on behalf of the corporation.

53 (e) If the amount of taxable income, alternative minimum taxable
54 income or other basis of tax for any year of any taxpayer, or of any
55 shareholder of any taxpayer that has elected to be taxed under subchap-
56 ters of chapter one of the internal revenue code or of any shareholder

1 of any taxpayer with respect to which an election has been made to be
2 treated as a qualified subchapter s subsidiary under paragraph three of
3 subsection (b) of section thirteen hundred sixty-one of the internal
4 revenue code as returned to the United States treasury department or the
5 New York state commissioner of taxation and finance is changed or
6 corrected by the commissioner of internal revenue or other officer of
7 the United States or the New York state commissioner of taxation and
8 finance or other competent authority, or if a taxpayer or such share-
9 holder of a taxpayer, pursuant to subsection (d) of section sixty-two
10 hundred thirteen of the internal revenue code, executes a notice of
11 waiver of the restrictions provided in subsection (a) of said section,
12 or if a taxpayer or such shareholder of a taxpayer, pursuant to
13 subsection (f) of section one thousand eighty-one of the tax law,
14 executes a notice of waiver of the restrictions provided in subsection
15 (c) of such section, such taxpayer shall report such changed or
16 corrected taxable income, alternative minimum taxable income or other
17 basis of tax or such execution of such notice of waiver and the changes
18 or corrections of the taxpayer's federal or New York state taxable
19 income, alternative minimum taxable income or other basis of tax on
20 which it is based, within ninety days, or one hundred twenty days, in
21 the case of a taxpayer making a combined return under this subchapter
22 for such year, after such execution or the final determination of such
23 change or correction, or as required by the commissioner of finance, and
24 shall concede the accuracy of such determination or state wherein it is
25 erroneous. The allowance of a tentative carryback adjustment based upon
26 a net capital loss carryback pursuant to section sixty-four hundred
27 eleven of the internal revenue code, shall be treated as a final deter-
28 mination for purposes of this subdivision. Any taxpayer filing an
29 amended return with such department shall also file within ninety days,
30 or one hundred twenty days, in the case of a taxpayer making a combined
31 return under this subchapter for such year, thereafter an amended return
32 with the commissioner of finance which shall contain such information as
33 the commissioner shall require.

34 (f) (1) For purposes of this subdivision, the term "bank holding
35 company" means any corporation subject to article three-A of the banking
36 law, or registered under the federal bank holding company act of nine-
37 teen hundred fifty-six, as amended, or registered as a savings and loan
38 holding company, but excluding a diversified savings and loan holding
39 company, under the federal national housing act, as amended.

40 (2) (i) Any banking corporation or bank holding company which is doing
41 business in the city in a corporate or organized capacity, and

42 (A) which owns or controls, directly or indirectly, eighty percent or
43 more of the voting stock of one or more banking corporations or bank
44 holding companies, or

45 (B) whose voting stock is eighty percent or more owned or controlled,
46 directly or indirectly, by a banking corporation or a bank holding
47 company,

48 shall make a return on a combined basis under this part covering
49 itself and such corporations described in clause (A) or (B) of this
50 subparagraph and shall set forth such information as the commissioner of
51 finance may require unless the taxpayer or the commissioner of finance
52 shows that the inclusion of such a corporation in the combined return
53 fails to properly reflect the tax liability of such corporation under
54 this part. Provided, however, that no banking corporation or bank hold-
55 ing company not a taxpayer shall be subject to the requirements of this
56 subparagraph unless the commissioner of finance deems that the applica-

1 tion of such requirements is necessary in order to properly reflect the
2 tax liability under this part, because of intercompany transactions or
3 some agreement, understanding, arrangement or transaction of the type
4 referred to in subdivision (g) of this section.

5 (ii) In the discretion of the commissioner of finance, any banking
6 corporation or bank holding company which is doing business in the city
7 in a corporate or organized capacity, and

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

11 (B) whose voting stock is sixty-five percent or more owned or
12 controlled, directly or indirectly, by a banking corporation or a bank
13 holding company, may be required or permitted to make a return on a
14 combined basis under this part covering itself and such corporations
15 described in clause (A) or (B) of this subparagraph and shall set forth
16 such information as the commissioner of finance may require; provided,
17 however, that no combined return shall be required or permitted unless
18 the commissioner of finance deems such report necessary in order to
19 properly reflect the tax liability under this part of any one or more of
20 such banking corporations or bank holding companies.

21 (iii) In the discretion of the commissioner of finance, banking corpo-
22 rations or bank holding companies which are each sixty-five percent or
23 more owned or controlled, directly or indirectly, by the same interest
24 may be permitted or required to make a return on a combined basis under
25 this part and shall set forth such information as the commissioner of
26 finance may require, if at least one such banking corporation or bank
27 holding company is doing business in the city in a corporate or organ-
28 ized capacity. No combined return shall be required or permitted unless
29 the commissioner of finance deems such report necessary in order to
30 properly reflect the tax liability under this part of any one or more of
31 such banking corporations or bank holding companies.

32 (iv) (A) Notwithstanding any provision of this paragraph, any bank
33 holding company exercising its corporate franchise or doing business in
34 the city may make a return on a combined basis without seeking the
35 permission of the commissioner with any banking corporation exercising
36 its corporate franchise or doing business in the city in a corporate or
37 organized capacity sixty-five percent or more of whose voting stock is
38 owned or controlled, directly or indirectly, by such bank holding compa-
39 ny, for the first taxable year beginning on or after January first, two
40 thousand and before January first, two thousand twenty during which such
41 bank holding company registers for the first time under the federal bank
42 holding company act, as amended, and also elects to be a financial hold-
43 ing company. In addition, for each subsequent taxable year beginning
44 after January first, two thousand and before January first, two thousand
45 twenty, any such bank holding company may file on a combined basis with-
46 out seeking the permission of the commissioner with any banking corpo-
47 ration that is exercising its corporate franchise or doing business in
48 the city and sixty-five percent or more of whose voting stock is owned
49 or controlled, directly or indirectly, by such bank holding company if
50 either such banking corporation is exercising its corporate franchise or
51 doing business in the city in a corporate or organized capacity for the
52 first time during such subsequent taxable year, or sixty-five percent or
53 more of the voting stock of such banking corporation is owned or
54 controlled, directly or indirectly, by such bank holding company for the
55 first time during such subsequent taxable year. Provided however, for
56 each subsequent taxable year beginning after January first, two thousand

1 and before January first, two thousand twenty, a banking corporation
2 described in this clause which filed on a combined basis with any such
3 bank holding company in a previous taxable year, must continue to file
4 on a combined basis with such bank holding company if such banking
5 corporation, during such subsequent taxable year, continues to exercise
6 its corporate franchise or do business in the city in a corporate or
7 organized capacity and sixty-five percent or more of such banking corpo-
8 ration's voting stock continues to be owned or controlled, directly or
9 indirectly, by such bank holding company, unless the permission of the
10 commissioner has been obtained to file on a separate basis for such
11 subsequent taxable year. Provided further, however, for each subsequent
12 taxable year beginning after January first, two thousand and before
13 January first, two thousand twenty, a banking corporation described in
14 this clause which did not file on a combined basis with any such bank
15 holding company in a previous taxable year, may not file on a combined
16 basis with such bank holding company during any such subsequent taxable
17 year unless the permission of the commissioner has been obtained to file
18 on a combined basis for such subsequent taxable year.

19 (B) Notwithstanding any provision of this paragraph other than clause
20 (A) of this subparagraph, the commissioner may not require a bank hold-
21 ing company which, during a taxable year beginning on or after January
22 first, two thousand and before January first, two thousand twenty,
23 registers for the first time during such taxable year under the federal
24 bank holding company act, as amended, and also elects to be a financial
25 holding company, to make a return on a combined basis for any taxable
26 year beginning on or after January first, two thousand and before Janu-
27 ary first, two thousand twenty with a banking corporation sixty-five
28 percent or more of whose voting stock is owned or controlled, directly
29 or indirectly, by such bank holding company.

30 (v)(A) For purposes of this subparagraph, the term "closest control-
31 ling stockholder" means the corporation that indirectly owns or controls
32 over fifty percent of the voting stock of a captive REIT or captive RIC,
33 is subject to tax under this subchapter or otherwise required to be
34 included in a combined return under this chapter and is the fewest tiers
35 of corporations away in the ownership structure from the captive REIT or
36 captive RIC. The commissioner is authorized to prescribe by regulation
37 or published guidance the criteria for determining the closest control-
38 ling stockholder.

39 (B) A captive REIT or a captive RIC must be included in a combined
40 return with the banking corporation or bank holding company that direct-
41 ly owns or controls over fifty percent of the voting stock of the
42 captive REIT or captive RIC if that banking corporation or bank holding
43 company is subject to tax or required to be included in a combined
44 return under this subchapter.

45 (C) If over fifty percent of the voting stock of a captive REIT or
46 captive RIC is not directly owned or controlled by a banking corporation
47 or bank holding company that is subject to tax or required to be
48 included in a combined return under this subchapter, then the captive
49 REIT or captive RIC must be included in a combined return with the
50 corporation that is the closest controlling stockholder of the captive
51 REIT or captive RIC. If the closest controlling stockholder of the
52 captive REIT or captive RIC is a banking corporation or bank holding
53 company that is subject to tax or otherwise required to be included in a
54 combined return under this subchapter, then the captive REIT or captive
55 RIC must be included in a combined return under this subchapter.

1 (D) If the corporation which directly owns or controls the voting
2 stock of the captive REIT or captive RIC is described in subparagraph
3 (ii) of paragraph four of this subdivision as a corporation not permit-
4 ted to make a combined return, then the provisions in clause (C) of this
5 subparagraph must be applied to determine the corporation in whose
6 combined return the captive REIT or captive RIC should be included. If,
7 under clause (C) of this subparagraph, the corporation that is the clos-
8 est controlling stockholder of the captive REIT or captive RIC is
9 described in subparagraph (ii) or (iv) of paragraph four of this subdivi-
10 sion as a corporation not permitted to make a combined return, then
11 that corporation is deemed to not be in the ownership structure of the
12 captive REIT or captive RIC, and the closest controlling stockholder
13 will be determined without regard to that corporation.

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

19 (F) If a captive REIT or a captive RIC is required under this subpara-
20 graph to be included in a combined return with another corporation, and
21 that other corporation is required to be included in a combined return
22 with another corporation under other provisions of this subdivision, the
23 captive REIT or captive RIC must be included in that combined return
24 with those corporations.

25 (G) If the banking corporation or bank holding company that directly
26 or indirectly owns or controls over fifty percent of the voting stock of
27 the captive REIT or captive RIC and is the closest controlling stock-
28 holder of the captive REIT or captive RIC is a member of an affiliated
29 group (1) that does not include any corporation that is engaged in a
30 business that a subsidiary of a bank holding company would not be
31 permitted to engage in, unless such business is de minimis, and (2)
32 whose members own assets the combined average value of which does not
33 exceed eight billion dollars, then the captive REIT or captive RIC must
34 not be included in a combined return under this subchapter. In that
35 instance, the captive REIT or captive RIC is subject to the provisions
36 of subdivision seven or eight of section 11-603 of this chapter. The
37 term "affiliated group" means "affiliated group" as defined in section
38 fifteen hundred four of the internal revenue code, but without regard to
39 the exceptions provided for in subsection (b) of such section.

40 (vi) For taxable years beginning on or after January first two thou-
41 sand eleven, a banking corporation doing business in the city solely
42 because it meets one or more of the tests in subparagraphs (i) through
43 (v) of paragraph one of subdivision (c) of section 11-639 of this chap-
44 ter, referred to in this subparagraph as the "credit card bank", will
45 not be included in a combined return pursuant to subparagraph (i) of
46 this paragraph with another banking corporation or bank holding company
47 which is doing business in the city unless the credit card bank or the
48 commissioner shows that the inclusion of the credit card bank in the
49 combined return is necessary to properly reflect the tax liability of
50 the credit card bank, the banking corporation or bank holding company
51 under this subchapter. However, any banking corporation that meets one
52 or more of the tests in subparagraphs (i) through (v) of paragraph one
53 of subsection (c) of section 11-639 of this chapter and was included in
54 a combined return for its last taxable year beginning before January
55 first, two thousand eleven may continue to be included in a combined
56 return for future taxable years, provided that once that banking corpo-

1 ration has been included in a combined return for any taxable year
2 beginning on or after January first, two thousand eleven, it must
3 continue to be included in a combined return until it obtains the
4 consent of the commissioner to cease being included in a combined return
5 because the combined return no longer properly reflects the tax liability
6 under this subchapter of any of the corporations included in the
7 combined return. Further, the credit card bank will be included in a
8 combined return with (A) any banking corporation not subject to tax
9 under this subchapter sixty-five percent or more of whose voting stock
10 is owned or controlled, directly or indirectly, by the credit card bank,
11 or (B) any banking corporation or bank holding company not subject to
12 tax under this subchapter which owns or controls, directly or indirect-
13 ly, sixty-five percent or more of the voting stock of the credit card
14 bank, or (C) any banking corporation not subject to tax under this
15 subchapter sixty-five percent or more of the voting stock of which is
16 owned or controlled, directly or indirectly, by the same corporation or
17 corporations that own or control, directly or indirectly, sixty-five
18 percent or more of the voting stock of the credit card bank, if the
19 corporation or corporations described in clauses (A), (B) and (C) of
20 this subparagraph provide services for or support to the credit card
21 bank's operations, unless the credit card bank or the commissioner shows
22 that the inclusion of any of those corporations in the combined return
23 fails to properly reflect the tax liability of the credit card bank. For
24 purposes of this subparagraph, services for or support to the credit
25 card bank's operations include such activities as billing, credit inves-
26 tigation and reporting, marketing, research, advertising, mailing,
27 customer service, information technology, lending and financing
28 services, and communications services, but will not include accounting,
29 legal or personnel services.

30 (3) (i) In the case of a combined return, the tax shall be measured by
31 the combined entire net income, combined alternative entire net income
32 or combined assets of all the corporations included in the return,
33 including any captive REIT or captive RIC. The allocation percentage
34 shall be computed based on the combined factors with respect to all the
35 corporations included in the combined return. In computing combined
36 entire net income and alternative entire net income intercorporate divi-
37 dends and all other intercorporate transactions shall be eliminated and
38 in computing combined assets intercorporate stockholdings and intercor-
39 porate bills, notes and accounts receivable and payable and other inter-
40 corporate indebtedness shall be eliminated.

41 (ii) In the case of a captive REIT required under this subdivision to
42 be included in a combined return, "entire net income" means "real estate
43 investment trust taxable income" as defined in paragraph two of subdivi-
44 sion (b) of section eight hundred fifty-seven, as modified by section
45 eight hundred fifty-eight, of the internal revenue code, plus the amount
46 taxable under paragraph three of subdivision (b) of section eight
47 hundred fifty-seven of that code, subject to the modifications required
48 by section 11-641 of this chapter. In the case of a captive RIC required
49 under this subdivision to be included in a combined return, "entire net
50 income" means "investment company taxable income" as defined in para-
51 graph two of subdivision (b) of section eight hundred fifty-two, as
52 modified by section eight hundred fifty-five, of the internal revenue
53 code, plus the amount taxable under paragraph three of subdivision (b)
54 of section eight hundred fifty-two of such code, subject to the modifi-
55 cations required by section 11-641 of this chapter. However, the
56 deduction under the internal revenue code for dividends paid by the

1 captive REIT or captive RIC to any member of the affiliated group that
2 includes the corporation that directly or indirectly owns over fifty
3 percent of the voting stock of the captive REIT or captive RIC shall be
4 limited to twenty-five percent for taxable years beginning on or after
5 January first, two thousand nine and before January first, two thousand
6 eleven and shall not be allowed for taxable years beginning on or after
7 January first, two thousand eleven. The term "affiliated group" means
8 "affiliated group" as defined in section fifteen hundred four of the
9 internal revenue code, but without regard to the exceptions provided for
10 in subsection (b) of such section.

11 (4) (i) In no event shall an item of income or expense of a corpo-
12 ration organized under the laws of a country other than the United
13 States be included in a combined return unless it is includible in
14 entire net income or alternative entire net income, as the case may be,
15 nor shall an asset of such a corporation be included in a combined
16 return unless it is included in taxable assets.

17 (ii) In no event shall a corporation organized under the laws of the
18 United States, this state or any other state, be included in a combined
19 return with a corporation organized under the laws of a country other
20 than the United States.

21 (iii) In no event shall a corporation which has made an election
22 pursuant to subdivision (d) of section 11-640 of this part to be subject
23 to the tax imposed by subchapter two of this chapter be included in a
24 combined return for those taxable years for which it is subject to the
25 tax imposed by subchapter two of this chapter.

26 (5) Tax liability under this part may be deemed to be improperly
27 reflected because of intercompany transactions or some agreement, under-
28 standing, arrangement or transaction referred to in subdivision (g) of
29 this section.

30 (g) In case it shall appear to the commissioner of finance that any
31 agreement, understanding or arrangement exists between the taxpayer and
32 any other corporation or any person or firm, whereby the activity, busi-
33 ness, income or assets of the taxpayer within the city is improperly or
34 inaccurately reflected, the commissioner of finance is authorized and
35 empowered, in his or her discretion and in such manner as he or she may
36 determine, to adjust items of income or deductions in computing entire
37 net income or alternative entire net income and to adjust assets, and to
38 adjust wages, salaries and other personal service compensation, receipts
39 or deposits in computing any allocation percentage, provided only that
40 entire net income or alternative entire net income be adjusted accord-
41 ingly and that any asset directly traceable to the elimination of any
42 receipt be eliminated from assets so as to accurately determine the tax.
43 If however, in the determination of the commissioner of finance, such
44 adjustments do not, or cannot effectively provide for the accurate
45 determination of the tax, the commissioner of finance shall be author-
46 ized to require the filing of a combined report by the taxpayer and any
47 such other corporations. Where (1) any taxpayer conducts its activity or
48 business under any agreement, arrangement or understanding in such
49 manner as either directly or indirectly to benefit its members or stock-
50 holders, or any of them, or any person or persons directly or indirectly
51 interested in such activity or business, by entering into any trans-
52 action at more or less than a fair price which, but for such agreement,
53 arrangement or understanding, might have been paid or received therefor,
54 or (2) any taxpayer enters into any transaction with another corporation
55 on such terms as to create an improper loss or net income, the commis-
56 sioner of finance may include in the entire net income or alternative

1 entire net income of the taxpayer the fair profits which, but for such
2 agreement, arrangement or understanding, the taxpayer might have derived
3 from such transaction.

4 § 11-647 Payment of tax. (a) To the extent the tax imposed for
5 section 11-639 of this part shall not have been previously paid pursuant
6 to section 11-645 of this part:

7 (1) such tax, or the balance thereof, shall be payable to the commis-
8 sioner of finance in full at the time its return is required to be
9 filed, and

10 (2) such tax, or the balance thereof, imposed on any taxpayer which
11 ceased to exercise its franchise or to be subject to the tax imposed by
12 this part shall be payable to the commissioner of finance at the time
13 the return is required to be filed, provided such tax of a domestic
14 corporation which continues to possess its franchise shall be subject to
15 adjustment as the circumstances may require; all other taxes of any such
16 taxpayer, which pursuant to the provisions of this subdivision would
17 otherwise be payable subsequent to the time such return is required to
18 be filed, shall nevertheless be payable at such time.

19 (b) If the taxpayer, within the time prescribed by subdivision (c) of
20 section 11-646 of this part, shall have applied for an automatic exten-
21 sion of time to file its annual return and shall have paid to the
22 commissioner of finance on or before the date of such application is
23 filed an amount properly estimated as provided by said subdivision the
24 only amount payable in addition to the tax shall be interest at the
25 underpayment rate set by the commissioner of finance pursuant to section
26 11-687 of this chapter, or, if no rate is set, at the rate of seven and
27 one-half percent per annum upon the amount by which the tax, or portion
28 thereof payable on or before the date the return was required to be
29 filed, exceeds the amount so paid, provided that:

30 (1) an amount so paid shall be deemed properly estimated if it is
31 either: (i) not less than ninety per cent of the tax as finally deter-
32 mined, or (ii) not less than the tax shown on the taxpayer's return for
33 the preceding taxable year, if such preceding year was a taxable year of
34 twelve months; and

35 (2) the time when a return is required to be filed shall be determined
36 without regard to any extension of time for filing such return.

37 (c) The commissioner of finance may grant a reasonable extension of
38 time for payment of any tax imposed by this part under such conditions
39 as the commissioner deems just and proper.

40 SUBCHAPTER 3-A

41 CORPORATE TAX OF 2015

42	Section 11-651	Applicability.
43	11-652	Definitions.
44	11-653	Imposition of tax; exemptions.
45	11-654	Computation of tax.
46	11-654.1	Net operating loss.
47	11-654.2	Receipts allocation.
48	11-654.3	Combined reports.
49	11-655	Reports.
50	11-656	Payment and lien of tax.
51	11-657	Declaration of estimated tax.
52	11-658	Payments on account of estimated tax.
53	11-659	Collection of taxes.
54	11-660	Limitations of time.

1 § 11-651 Applicability. 1. Notwithstanding anything to the contrary in
2 this chapter, this subchapter shall apply to corporations for tax years
3 commencing on or after January first, two thousand fifteen, except that
4 it shall not apply to any corporation that (a) has an election in effect
5 under subsection (a) of section thirteen hundred sixty-two of the inter-
6 nal revenue code, as amended, or (b) is a qualified subchapter S subsidi-
7 ary within the meaning of paragraph three of subsection (b) of section
8 thirteen hundred sixty-one of the internal revenue code, as amended, in
9 any tax year commencing on or after such date. Subchapters two and three
10 of this chapter shall not apply to corporations to which this subchapter
11 applies for tax years commencing on or after January first, two thousand
12 fifteen, except to the extent provided in this subchapter and to the
13 extent that the effect of the application of subchapters two and three
14 to tax years commencing prior to January first, two thousand fifteen
15 carries over to tax years commencing on or after January first, two
16 thousand fifteen.

17 2. Each reference in the tax law or this code to subchapters two or
18 three of this chapter, or any of the provisions thereof, shall be deemed
19 a reference also to this subchapter, and any of the applicable
20 provisions thereof, where appropriate and with all necessary modifica-
21 tions.

22 § 11-652 Definitions. 1. (a) The term "corporation" includes (1) an
23 association within the meaning of paragraph three of subsection (a) of
24 section seventy-seven hundred one of the internal revenue code, includ-
25 ing, when applicable, a limited liability company, (2) a joint-stock
26 company or association, (3) a publicly traded partnership treated as a
27 corporation for purposes of the internal revenue code pursuant to
28 section seventy-seven hundred four thereof and (4) any business
29 conducted by a trustee or trustees wherein interest or ownership is
30 evidenced by certificate or other written instrument;

31 (b) (1) Notwithstanding paragraph (a) of this subdivision, an unincor-
32 porated organization that (i) is described in subparagraph one or three
33 of paragraph (a) of this subdivision, (ii) was subject to the provisions
34 of chapter five of this title for its taxable year beginning in nineteen
35 hundred ninety-five, and (iii) made a one-time election not to be treat-
36 ed as a corporation and, instead, to continue to be subject to the
37 provisions of chapter five of this title for its taxable years beginning
38 in nineteen hundred ninety-six and thereafter, shall continue to be
39 subject to the provisions of chapter five of this title for its taxable
40 years beginning in nineteen hundred ninety-six.

41 (2) An election under this paragraph shall continue to be in effect
42 until revoked by the unincorporated organization. An election under this
43 paragraph shall be revoked by the filing of a return under this subchap-
44 ter for the first taxable year with respect to which such revocation is
45 to be effective. Such return shall be filed on or before the due date,
46 determined with regard to extensions, for filing such return. In no
47 event shall such election or revocation be for a part of a taxable year.

48 (c) Notwithstanding paragraph (a) of this subdivision, a corporation
49 shall not include an entity classified as a partnership for federal
50 income tax purposes.

51 2. The term "subsidiary" means a corporation of which over fifty per
52 centum of the number of shares of stock entitling the holders thereof to
53 vote for the election of directors or trustees is owned by the taxpayer.

54 2-a. The term "taxpayer" means any corporation subject to tax under
55 this subchapter.

56 3. Intentionally omitted.

1 3-a. The term "stock" means an interest in a corporation that is
2 treated as equity for federal income tax purposes.

3 4. (a) The term "investment capital" means investments in stocks that:
4 (i) satisfy the definition of a capital asset under section one thousand
5 two hundred twenty-one of the internal revenue code at all times the
6 taxpayer owned such stocks during the taxable year; (ii) are held by the
7 taxpayer for investment for more than one year; (iii) the dispositions
8 of which are, or would be, treated by the taxpayer as generating long-
9 term capital gains or losses under the internal revenue code; (iv) for
10 stocks acquired on or after January first, two thousand fifteen, at any
11 time after the close of the day in which they are acquired, have never
12 been held for sale to customers in the regular course of business; and
13 (v) before the close of the day on which the stock was acquired, are
14 clearly identified in the taxpayer's records as stock held for invest-
15 ment in the same manner as required under paragraph one of subdivision
16 (a) of section one thousand two hundred thirty-six of the internal
17 revenue code for the stock of a dealer in securities to be eligible for
18 capital gain treatment, whether or not the taxpayer is a dealer of secu-
19 rities subject to section one thousand two hundred thirty-six, provided,
20 however, that for stock acquired prior to October first, two thousand
21 fifteen that was not subject to subdivision (a) of section one thousand
22 two hundred thirty-six of the internal revenue code, such identification
23 in the taxpayer's records must occur before October first, two thousand
24 fifteen. Stock in a corporation that is conducting a unitary business
25 with the taxpayer, stock in a corporation that is included in a combined
26 report with the taxpayer pursuant to the commonly owned group election
27 in subdivision three of section 11-654.3 of this subchapter, and stock
28 issued by the taxpayer shall not constitute investment capital. For
29 purposes of this subdivision, if the taxpayer owns or controls, directly
30 or indirectly, less than twenty percent of the voting power of the stock
31 of a corporation, that corporation will be presumed to be conducting a
32 business that is not unitary with the business of the taxpayer.

33 (b) There shall be deducted from investment capital any liabilities
34 which are directly or indirectly attributable to investment capital. If
35 the amount of those liabilities exceeds the amount of investment capi-
36 tal, the amount of investment capital shall be zero.

37 (c) Investment capital shall not include any such investments the
38 income from which is excluded from entire net income pursuant to the
39 provisions of paragraph (c-1) of subdivision eight of this section, and
40 that investment capital shall be computed without regard to liabilities
41 directly or indirectly attributable to such investments, but only if air
42 carriers organized in the United States and operating in the foreign
43 country or countries in which the taxpayer has its major base of oper-
44 ations and in which it is organized, resident or headquartered, if not
45 in the same country as its major base of operations, are not subject to
46 any tax based on or measured by capital imposed by such foreign country
47 or countries or any political subdivision thereof, or if taxed, are
48 provided an exemption, equivalent to that provided for herein, from any
49 tax based on or measured by capital imposed by such foreign country or
50 countries and from any such tax imposed by any political subdivision
51 thereof.

52 (d) If a taxpayer acquires stock that is a capital asset under section
53 one thousand two hundred twenty-one of the internal revenue code during
54 the taxable year and owns that stock on the last day of the taxable
55 year, it will be presumed, solely for the purposes of determining wheth-
56 er that stock should be classified as investment capital after it is

1 acquired, that the taxpayer held that stock for more than one year.
2 However, if the taxpayer does not in fact own that stock at the time it
3 actually files its original report for the taxable year in which it
4 acquired the stock, then such presumption shall not apply and the actual
5 period of time during which the taxpayer owned the stock shall be used
6 to determine whether the stock should be classified as investment capi-
7 tal after it is acquired. If the taxpayer relies on such presumption but
8 does not own the stock for more than one year, the taxpayer must
9 increase its total business capital in the immediately succeeding taxa-
10 ble year by the amount included in investment capital for that stock,
11 net of any liabilities attributable to that stock computed as provided
12 in paragraph (b) of this subdivision and must increase its business
13 income in the immediately succeeding taxable year by the amount of
14 income and net gains, but not less than zero, from that stock included
15 in investment income, less any interest deductions directly or indirect-
16 ly attributable to that stock, as provided in subdivision five of this
17 section.

18 (e) When income or gain from a debt obligation or other security
19 cannot be allocated to the city using the business allocation percentage
20 as a result of the United States constitutional principles, the debt
21 obligation or other security will be included in investment capital.

22 5. (a)(i) The term "investment income" means income, including capital
23 gains in excess of capital losses, from investment capital, to the
24 extent included in computing entire net income, less, in the discretion
25 of the commissioner of finance, any interest deductions allowable in
26 computing entire net income which are directly or indirectly attribut-
27 able to investment capital or investment income, provided, however, that
28 in no case shall investment income exceed entire net income.

29 (ii) If the amount of interest deductions subtracted under subpara-
30 graph (i) of this paragraph exceeds investment income, the excess of
31 such amount over investment income must be added back to entire net
32 income.

33 (iii) If the taxpayer's investment income determined without regard to
34 the interest deductions subtracted under subparagraph (i) of this para-
35 graph comprises more than eight percent of the taxpayer's entire net
36 income, investment income determined without regard to such interest
37 deductions cannot exceed eight percent of the taxpayer's entire net
38 income.

39 (b) In lieu of subtracting from investment income the amount of those
40 interest deductions, the taxpayer may make a revocable election to
41 reduce its total investment income, determined after applying the limi-
42 tation in subparagraph (iii) of paragraph (a) of this subdivision, by
43 forty percent. If the taxpayer makes this election, the taxpayer must
44 also make the elections provided for in paragraphs (b) and (c) of subdivi-
45 sion five-a of this section. If the taxpayer subsequently revokes this
46 election, the taxpayer must revoke the elections provided for in para-
47 graphs (b) and (c) of subdivision five-a of this section. A taxpayer
48 that does not make this election because it has no investment capital
49 will not be precluded from making those other elections.

50 (c) Investment income shall not include any amount treated as divi-
51 dends pursuant to section seventy-eight of the internal revenue code.

52 5-a. (a) The term "other exempt income" means the sum of exempt CFC
53 income and exempt unitary corporation dividends.

54 (b) "Exempt CFC income" means (i) except to the extent described in
55 subparagraph (ii) of this paragraph, the income required to be included
56 in the taxpayer's federal gross income pursuant to subsection (a) of

1 section nine hundred fifty-one of the internal revenue code, received
2 from a corporation that is conducting a unitary business with the
3 taxpayer but is not included in a combined report with the taxpayer, and
4 (ii) such income required to be included in the taxpayer's federal gross
5 income pursuant to subsection (a) of such section nine hundred fifty-one
6 of the internal revenue code by reason of subsection (a) of section nine
7 hundred sixty-five of the internal revenue code, as adjusted by
8 subsection (b) of section nine hundred sixty-five of the internal revenue
9 code, and without regard to subsection (c) of such section, received
10 from a corporation that is not included in a combined report with the
11 taxpayer, less, (iii) in the discretion of the commissioner of finance,
12 any interest deductions directly or indirectly attributable to that
13 income. In lieu of subtracting from its exempt CFC income the amount of
14 those interest deductions, the taxpayer may make a revocable election to
15 reduce its total exempt CFC income by forty percent. If the taxpayer
16 makes this election, the taxpayer must also make the elections provided
17 for in paragraph (b) of subdivision five of this section and paragraph
18 (c) of this subdivision. If the taxpayer subsequently revokes this
19 election, the taxpayer must revoke the elections provided for in para-
20 graph (b) of subdivision five of this section and paragraph (c) of this
21 subdivision. A taxpayer which does not make this election because it has
22 no exempt CFC income will not be precluded from making those other
23 elections. The income described in subparagraph (ii) of this paragraph
24 shall not constitute investment income.

25 (c) "Exempt unitary corporate dividends" means those dividends from a
26 corporation that is conducting a unitary business with the taxpayer but
27 is not included in a combined report with the taxpayer, less, in the
28 discretion of the commissioner of finance, any interest deductions
29 directly or indirectly attributable to such income. Other than dividend
30 income received from corporations that are taxable under chapter eleven
31 of this title, except for vendors of utility services that are also
32 taxable under this subchapter, or would be taxable under chapter eleven
33 of this title, except for vendors of utility services that are also
34 taxable under this subchapter, if subject to tax and corporations that
35 would have been taxable as insurance corporations under former part IV,
36 title R, chapter forty-six of the administrative code of the city of New
37 York as in effect on June thirtieth, nineteen hundred seventy-four, in
38 lieu of subtracting from this dividend income those interest deductions,
39 the taxpayer may make a revocable election to reduce the total amount of
40 this dividend income by forty percent. If the taxpayer makes this
41 election, the taxpayer must also make the elections provided for in
42 paragraph (b) of subdivision five of this section and paragraph (b) of
43 this subdivision. If the taxpayer subsequently revokes this election,
44 the taxpayer must revoke the elections provided for in paragraph (b) of
45 subdivision five of this section and paragraph (b) of this subdivision.
46 A taxpayer that does not make this election because it has not received
47 any exempt unitary corporation dividends or is precluded from making
48 this election for dividends received from corporations that are taxable
49 under chapter eleven of this title, except for vendors of utility
50 services that are also taxable under this subchapter, or would be tax-
51 able under chapter eleven of this title if subject to tax, except for
52 vendors of utility services that are also taxable under this subchapter,
53 shall not be precluded from making those other elections.

54 (d) If the taxpayer attributes interest deductions to other exempt
55 income and the amount deducted exceeds other exempt income, the excess
56 of the interest deductions over other exempt income must be added back

1 to entire net income. In no case shall other exempt income exceed entire
2 net income.

3 (e) Other exempt income shall not include any amount treated as divi-
4 dends pursuant to section seventy-eight of the internal revenue code.

5 6. (a) The term "business capital" means all assets, other than
6 investment capital and stock issued by the taxpayer, less liabilities
7 not deducted from investment capital; provided, however, business capi-
8 tal shall include only those assets the income, loss or expense of which
9 are properly reflected, or would have been properly reflected if not
10 fully depreciated or expensed or depreciated or expensed to a nominal
11 amount, in the computation of entire net income for the taxable year.

12 (b) Provided, further, "business capital" shall not include assets to
13 the extent employed for the purpose of generating income which is
14 excluded from entire net income pursuant to the provisions of paragraph
15 (c-1) of subdivision eight of this section and shall be computed without
16 regard to liabilities directly or indirectly attributable to such
17 assets, but only if air carriers organized in the United States and
18 operating in the foreign country or countries in which the taxpayer has
19 its major base of operations and in which it is organized, resident or
20 headquartered, if not in the same country as its major base of oper-
21 ations, are not subject to any tax based on or measured by capital
22 imposed by such foreign country or countries or any political subdivi-
23 sion thereof, or if taxed, are provided an exemption, equivalent to that
24 provided for herein, from any tax based on or measured by capital
25 imposed by such foreign country or countries and from any such tax
26 imposed by any political subdivision thereof.

27 7. The term "business income" means entire net income minus investment
28 income and other exempt income. In no event shall the sum of investment
29 income and other exempt income exceed entire net income. If the taxpayer
30 makes the election provided for in subparagraph one of paragraph (a) of
31 subdivision five of section 11-654.2 of this subchapter, then all income
32 from qualified financial instruments shall constitute business income.

33 8. The term "entire net income" means total net income from all sourc-
34 es, which shall be presumably the same as the entire taxable income,
35 which, except as hereafter provided in this subdivision,

36 (i) the taxpayer is required to report to the United States treasury
37 department, or

38 (ii) the taxpayer, in the case of a corporation that is exempt from
39 federal income tax, other than the tax on unrelated business taxable
40 income imposed under section five hundred eleven of the internal revenue
41 code, but which is subject to tax under this subchapter, would have been
42 required to report to the United States treasury department but for such
43 exemption, or

44 (iii) in the case of an alien corporation that under any provision of
45 the internal revenue code is not treated as a "domestic corporation" as
46 defined in section seven thousand seven hundred one of such code, is
47 effectively connected with the conduct of a trade or business within the
48 United States as determined under section eight hundred eighty-two of
49 the internal revenue code.

50 (a) Entire net income shall not include:

51 (1) Intentionally omitted;

52 (2) Intentionally omitted;

53 (2-a) any amounts treated as dividends pursuant to section seventy-
54 eight of the internal revenue code to the extent such dividends are not
55 deducted under section two hundred fifty of such code;

56 (3) bona fide gifts;

1 (4) income and deductions with respect to amounts received from school
2 districts and from corporations and associations, organized and operated
3 exclusively for religious, charitable or educational purposes, no part
4 of the net earnings of which inures to the benefit of any private share-
5 holder or individual, for the operation of school buses;

6 (5) any refund or credit of a tax imposed under this chapter, or
7 imposed by article nine, nine-A, twenty-three, or former article thir-
8 ty-two of the tax law, for which tax no exclusion or deduction was
9 allowed in determining the taxpayer's entire net income under this
10 subchapter, subchapter two, or subchapter three of this chapter for any
11 prior year;

12 (6) Intentionally omitted;

13 (7) that portion of wages and salaries paid or incurred for the taxa-
14 ble year for which a deduction is not allowed pursuant to the provisions
15 of section two hundred eighty-C of the internal revenue code;

16 (8) except with respect to property which is a qualified mass commut-
17 ing vehicle described in subparagraph (D) of paragraph eight of
18 subsection (f) of section one hundred sixty-eight of the internal reven-
19 ue code, relating to qualified mass commuting vehicles, and property of
20 a taxpayer principally engaged in the conduct of an aviation, steamboat,
21 ferry or navigation business, or two or more of such businesses, which
22 is placed in service before taxable years beginning in nineteen hundred
23 eighty-nine, any amount which is included in the taxpayer's federal
24 taxable income solely as a result of an election made pursuant to the
25 provisions of such paragraph eight as it was in effect for agreements
26 entered into prior to January first, nineteen hundred eighty-four;

27 (9) except with respect to property which is a qualified mass commut-
28 ing vehicle described in subparagraph (D) of paragraph eight of
29 subsection (f) of section one hundred sixty-eight of the internal reven-
30 ue code, relating to qualified mass commuting vehicles, and property of
31 a taxpayer principally engaged in the conduct of an aviation, steamboat,
32 ferry or navigation business, or two or more of such businesses, which
33 is placed in service before taxable years beginning in nineteen hundred
34 eighty-nine, any amount which the taxpayer could have excluded from
35 federal taxable income had it not made the election provided for in such
36 paragraph eight as it was in effect for agreements entered into prior to
37 January first, nineteen hundred eighty-four;

38 (10) the amount deductible pursuant to paragraph (j) of this subdivi-
39 sion;

40 (11) upon the disposition of property to which paragraph (j) of this
41 subdivision applies, the amount, if any, by which the aggregate of the
42 amounts described in subparagraph eleven of paragraph (b) of this subdivi-
43 sion attributable to such property exceeds the aggregate of the
44 amounts described in paragraph (j) of this subdivision attributable to
45 such property;

46 (12) the amount deductible pursuant to paragraph (k) of this subdivi-
47 sion;

48 (13) the amount deductible pursuant to paragraph (o) of this subdivi-
49 sion;

50 (14) the amount computed pursuant to paragraph (q), (r) or (s) of this
51 subdivision, but only the amount determined pursuant to one of such
52 paragraphs; and

53 (15) the amount computed pursuant to paragraph (t) of this subdivi-
54 sion.

55 (16) The amount of any gain added back to determine entire net income
56 in a previous taxable year pursuant to subparagraph twenty-three of

1 paragraph (b) of subdivision eight of this section is included in feder-
2 al gross income for the taxable year.

3 (17) The amount of any grant received through either the COVID-19
4 pandemic small business recovery grant program, pursuant to section
5 sixteen-ff of the New York state urban development corporation act, or
6 the small business resilience grant program administered by the depart-
7 ment of small business services, to the extent the amount of either such
8 grant is included in federal taxable income.

9 (a-1) Notwithstanding any other provision of this subchapter, in the
10 case of a taxpayer that is a partner in a partnership subject to the tax
11 imposed by chapter eleven of this title as a utility, as defined in
12 subdivision six of section 11-1101 of such chapter, entire net income
13 shall not include the taxpayer's distributive or pro rata share for
14 federal income tax purposes of any item of income, gain, loss or
15 deduction of such partnership, or any item of income, gain, loss or
16 deduction of such partnership that the taxpayer is required to take into
17 account separately for federal income tax purposes.

18 (b) Entire net income shall be determined without the exclusion,
19 deduction or credit of:

20 (1) in the case of an alien corporation that under any provision of
21 the internal revenue code is not treated as a "domestic corporation" as
22 defined in section seven thousand seven hundred one of such code, (i)
23 any part of any income from dividends or interest on any kind of stock,
24 securities or indebtedness, but only if such income is treated as effec-
25 tively connected with the conduct of a trade or business in the United
26 States pursuant to section eight hundred sixty-four of the internal
27 revenue code, (ii) any income exempt from federal taxable income under
28 any treaty obligation of the United States, but only if such income
29 would be treated as effectively connected in the absence of such
30 exemption provided that such treaty obligation does not preclude the
31 taxation of such income by a state, or (iii) any income which would be
32 treated as effectively connected if such income were not excluded from
33 gross income pursuant to subsection (a) of section one hundred three of
34 the internal revenue code;

35 (2) any part of any income from dividends or interest of any kind of
36 stock, securities, or indebtedness;

37 (3) taxes on or measured by profits or income paid or accrued to the
38 United States, any of its possessions, territories or commonwealths,
39 including taxes in lieu of any of the foregoing taxes otherwise general-
40 ly imposed by any possession, territory or commonwealth of the United
41 States, or taxes paid or accrued to the state under article nine,
42 nine-A, thirteen-A or thirty-two of the tax law as in effect on December
43 thirty-first, two thousand fourteen;

44 (3-a) taxes on or measured by profits or income, or which include
45 profits or income as a measure, paid or accrued to any other state of
46 the United States, or any political subdivision thereof, or to the
47 District of Columbia, including taxes expressly in lieu of any of the
48 foregoing taxes otherwise generally imposed by any other state of the
49 United States, or any political subdivision thereof, or the District of
50 Columbia;

51 (4) taxes imposed under this chapter;

52 (4-a) Intentionally omitted;

53 (4-b) the amount allowed as an exclusion or a deduction imposed by the
54 tax law in determining the entire taxable income for a relocation
55 described in subdivision thirteen of section 11-654 of this subchapter
56 which the taxpayer is required to report to the United States treasury

1 department but only such portion of such exclusion or deduction which is
2 not in excess of the amount of the credit allowed pursuant to subdivi-
3 sion thirteen of section 11-654 of this subchapter;

4 (4-c) the amount allowed as an exclusion or a deduction imposed by the
5 tax law for a relocation described in subdivision fourteen of section
6 11-654 of this subchapter in determining the entire taxable income which
7 the taxpayer is required to report to the United States treasury depart-
8 ment but only such portion of such exclusion or deduction which is not
9 in excess of the amount of the credit allowed pursuant to subdivision
10 fourteen of section 11-654 of this subchapter;

11 (4-d) Intentionally omitted;

12 (4-e) Intentionally omitted;

13 (5) Intentionally omitted;

14 (6) any amount allowed as a deduction for the taxable year under
15 section one hundred seventy-two of the internal revenue code, including
16 carryovers of deductions from prior taxable years;

17 (7) any amount by reason of the granting, issuing or assuming of a
18 restricted stock option, as defined in the internal revenue code of
19 nineteen hundred fifty-four, or by reason of the transfer of the share
20 of stock upon the exercise of the option, unless such share is disposed
21 of by the grantee of the option within two years from the date of the
22 granting of the option or within six months after the transfer of such
23 share to the grantee;

24 (8) Intentionally omitted;

25 (9) except with respect to property which is a qualified mass commut-
26 ing vehicle described in subparagraph (D) of paragraph eight of
27 subsection (f) of section one hundred sixty-eight of the internal reven-
28 ue code, relating to qualified mass commuting vehicles, and property of
29 a taxpayer principally engaged in the conduct of an aviation, steamboat,
30 ferry or navigation business, or two or more of such businesses, which
31 is placed in service before taxable years beginning in nineteen hundred
32 eighty-nine, any amount which the taxpayer claimed as a deduction in
33 computing its federal taxable income solely as a result of an election
34 made pursuant to the provisions of such paragraph eight as it was in
35 effect for agreements entered into prior to January first, nineteen
36 hundred eighty-four;

37 (10) except with respect to property which is a qualified mass commut-
38 ing vehicle described in subparagraph (D) of paragraph eight of
39 subsection (f) of section one hundred sixty-eight of the internal reven-
40 ue code, relating to qualified mass commuting vehicles, and property of
41 a taxpayer principally engaged in the conduct of an aviation, steamboat,
42 ferry or navigation business, or two or more of such businesses, which
43 is placed in service before taxable years beginning in nineteen hundred
44 eighty-nine, any amount which the taxpayer would have been required to
45 include in the computation of its federal taxable income had it not made
46 the election permitted pursuant to such paragraph eight as it was in
47 effect for agreements entered into prior to January first, nineteen
48 hundred eighty-four;

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

1 of a taxpayer principally engaged in the conduct of an aviation, steam-
2 boat, ferry or navigation business, or two or more of such businesses,
3 which is placed in service before taxable years beginning in nineteen
4 hundred eighty-nine, the amount allowable as a deduction determined
5 under section one hundred sixty-eight of the internal revenue code;

6 (12) upon the disposition of property to which paragraph (j) of this
7 subdivision applies, the amount, if any, by which the aggregate of the
8 amounts described in such paragraph (j) attributable to such property
9 exceeds the aggregate of the amounts described in subparagraph eleven of
10 this paragraph attributable to such property;

11 (13) Intentionally omitted;

12 (14) Intentionally omitted;

13 (15) Intentionally omitted;

14 (16) in the case of qualified property described in paragraph two of
15 subsection (k) of section one hundred sixty-eight of the internal reven-
16 ue code, other than qualified resurgence zone property described in
17 paragraph (m) of this subdivision, and other than qualified New York
18 Liberty Zone property described in paragraph two of subsection (b) of
19 section fourteen hundred-L of the internal revenue code, without regard
20 to clause (i) of subparagraph (C) of such paragraph, the amount allow-
21 able as a deduction under section one hundred sixty-seven of the inter-
22 nal revenue code;

23 (17) in the case of a taxpayer that is not an eligible farmer as
24 defined in subsection (n) of section six hundred six of the tax law, the
25 amount allowable as a deduction under sections one hundred seventy-nine,
26 one hundred sixty-seven and one hundred sixty-eight of the internal
27 revenue code with respect to a sport utility vehicle that is not a
28 passenger automobile as defined in paragraph five of subsection (d) of
29 section two hundred eighty-F of the internal revenue code;

30 (18) the amount of any deduction allowed pursuant to section one
31 hundred ninety-nine of the internal revenue code;

32 (19) the amount of any federal deduction for taxes imposed under arti-
33 cle twenty-three of the tax law;

34 (20) the amount of any federal deduction allowed pursuant to
35 subsection (c) of section nine hundred sixty-five of the internal reven-
36 ue code;

37 (21) the amount of any federal deduction allowed pursuant to subpara-
38 graph (A) of paragraph one of subdivision (a) of section two hundred
39 fifty of the internal revenue code.

40 (22) For taxable years beginning in two thousand nineteen and two
41 thousand twenty, the amount of the increase in the federal interest
42 deduction allowed pursuant to paragraph ten of subdivision (j) of
43 section one hundred sixty-three of the internal revenue code.

44 (23) The amount of any gain excluded from federal gross income for the
45 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
46 section one thousand four hundred-Z-two of the internal revenue code.

47 (c) Intentionally omitted.

48 (c-1)(1) Notwithstanding any other provision of this subchapter, in
49 the case of a taxpayer which is a foreign air carrier holding a foreign
50 air carrier permit issued by the United States department of transporta-
51 tion pursuant to section four hundred two of the federal aviation act of
52 nineteen hundred fifty-eight, as amended, and which is qualified under
53 subparagraph two of this paragraph, entire net income shall not include,
54 and shall be computed without the deduction of, amounts directly or
55 indirectly attributable to, (i) any income derived from the interna-
56 tional operation of aircraft as described in and subject to the

1 provisions of section eight hundred eighty-three of the internal revenue
2 code, (ii) income without the United States which is derived from the
3 operation of aircraft, and (iii) income without the United States which
4 is of a type described in subdivision (a) of section eight hundred
5 eighty-one of the internal revenue code except that it is derived from
6 sources without the United States. Entire net income shall include
7 income described in clauses (i), (ii) and (iii) of this subparagraph in
8 the case of taxpayers not described in the previous sentence;

9 (2) A taxpayer is qualified under this subparagraph if air carriers
10 organized in the United States and operating in the foreign country or
11 countries in which the taxpayer has its major base of operations and in
12 which it is organized, resident or headquartered, if not in the same
13 country as its major base of operations, are not subject to any income
14 tax or other tax based on or measured by income or receipts imposed by
15 such foreign country or countries or any political subdivision thereof,
16 or if so subject to such tax, are provided an exemption from such tax
17 equivalent to that provided for herein.

18 (d) The commissioner of finance may, whenever necessary in order to
19 properly reflect the entire net income of any taxpayer, determine the
20 year or period in which any item of income or deduction shall be
21 included, without regard to the method of accounting employed by the
22 taxpayer.

23 (e) The entire net income of any bridge commission created by act of
24 congress to construct a bridge across an international boundary means
25 its gross income less the expense of maintaining and operating its prop-
26 erties, the annual interest upon its bonds and other obligations, and
27 the annual charge for the retirement of such bonds or obligations at
28 maturity.

29 (f) Intentionally omitted.

30 (g) At the election of the taxpayer, a deduction shall be allowed for
31 expenditures paid or incurred during the taxable year for the
32 construction, reconstruction, erection or improvement of industrial
33 waste treatment facilities and air pollution control facilities.

34 (1)(i) The term "industrial waste treatment facilities" shall mean
35 facilities for the treatment, neutralization or stabilization of indus-
36 trial waste, as the term "industrial waste" is defined in section
37 17-0105 of the environmental conservation law, from a point immediately
38 preceding the point of such treatment, neutralization or stabilization
39 to the point of disposal, including the necessary pumping and transmit-
40 ting facilities, but excluding such facilities installed for the primary
41 purpose of salvaging materials which are usable in the manufacturing
42 process or are marketable.

43 (ii) The term "air pollution control facilities" shall mean facilities
44 which remove, reduce, or render less noxious air contaminants emitted
45 from an air contamination source, as the terms "air contaminant" and
46 "air contamination source" are defined in section 19-0107 of the envi-
47 ronmental conservation law, from a point immediately preceding the point
48 of such removal, reduction or rendering to the point of discharge of
49 air, meeting emission standards as established by the air pollution
50 control board, but excluding such facilities installed for the primary
51 purpose of salvaging materials which are usable in the manufacturing
52 process or are marketable and excluding those facilities which rely for
53 their efficacy on dilution, dispersion or assimilation of air contam-
54 inants in the ambient air after emission.

55 (2) However, such deduction shall be allowed only (i) with respect to
56 tangible property which is depreciable, pursuant to section one hundred

1 sixty-seven of the internal revenue code, having a situs in the city and
2 used in the taxpayer's trade or business, the construction, recon-
3 struction, erection or improvement of which, in the case of industrial
4 waste treatment facilities, is initiated on or after January first,
5 nineteen hundred sixty-six, and only for expenditures paid or incurred
6 prior to January first, nineteen hundred seventy-two, or which, in the
7 case of air pollution control facilities, is initiated on or after Janu-
8 ary first, nineteen hundred sixty-six, and

9 (ii) on condition that such facilities have been certified by the
10 state commissioner of environmental conservation or the state commis-
11 sioner's designated representative, in the same manner as provided for
12 in section 17-0707 or 19-0309 of the environmental conservation law, as
13 applicable, as complying with applicable provisions of the environmental
14 conservation law, the state sanitary code and regulations, permits or
15 orders issued pursuant thereto, and

16 (iii) on condition that entire net income for the taxable year and all
17 succeeding taxable years be computed without any deductions for such
18 expenditures or for depreciation of the same property other than the
19 deductions allowed by this paragraph except to the extent that the basis
20 of the property may be attributable to factors other than such expendi-
21 tures, or in case a deduction is allowable pursuant to this paragraph
22 for only a part of such expenditures, on condition that any deduction
23 allowed for federal income tax purposes for such expenditures or for
24 depreciation of the same property be proportionately reduced in comput-
25 ing entire net income for the taxable year and all succeeding taxable
26 years, and

27 (iv) where the election provided for in paragraph (d) of subdivision
28 three of section 11-604 of this chapter or the election provided for in
29 subdivision (k) of section 11-641 of this chapter has not been exercised
30 in respect to the same property.

31 (3)(i) If expenditures in respect to an industrial waste treatment
32 facility or an air pollution control facility have been deducted as
33 provided herein and if within ten years from the end of the taxable year
34 in which such deduction was allowed such property or any part thereof is
35 used for the primary purpose of salvaging materials which are usable in
36 the manufacturing process or are marketable, the taxpayer shall report
37 such change of use in its report for the first taxable year during which
38 it occurs, and the commissioner of finance may recompute the tax for the
39 year or years for which such deduction was allowed and any carryback or
40 carryover year, and may assess any additional tax resulting from such
41 recomputation within the time fixed by paragraph (h) of subdivision
42 three of section 11-674 of this chapter.

43 (ii) If a deduction is allowed as herein provided for expenditures
44 paid or incurred during any taxable year on the basis of a temporary
45 certificate of compliance issued pursuant to the environmental conserva-
46 tion law and if the taxpayer fails to obtain a permanent certificate of
47 compliance upon completion of the facilities with respect to which such
48 temporary certificate was issued, the taxpayer shall report such failure
49 in its report for the taxable year during which such facilities are
50 completed, and the commissioner of finance may recompute the tax for the
51 year or years for which such deduction was allowed and any carryback or
52 carryover year, and may assess any additional tax resulting from such
53 recomputation within the time fixed by paragraph (h) of subdivision
54 three of section 11-674 of this chapter.

55 (4) In any taxable year when property is sold or otherwise disposed
56 of, with respect to which a deduction has been allowed pursuant to this

1 paragraph, such deduction shall be disregarded in computing gain or
2 loss, and the gain or loss on the sale or other disposition of such
3 property shall be the gain or loss entering into the computation of
4 entire taxable income which the taxpayer is required to report to the
5 United States treasury for such taxable year;

6 (h) With respect to gain derived from the sale or other disposition of
7 any property acquired prior to January first, nineteen hundred sixty-
8 six; which had a federal adjusted basis on such date, or on the date of
9 its sale or other disposition prior to January first, nineteen hundred
10 sixty-six, lower than its fair market value on January first, nineteen
11 hundred sixty-six or the date of its sale or other disposition prior
12 thereto, except property described in subsections one and four of
13 section twelve hundred twenty-one of the internal revenue code, there
14 shall be deducted from entire net income, the difference between (1) the
15 amount of the taxpayer's federal taxable income, and (2) the amount of
16 the taxpayer's federal taxable income, if smaller than the amount
17 described in subparagraph one of this paragraph, computed as if the
18 federal adjusted basis of each such property, on the sale or other
19 disposition of which gain was derived, on the date of the sale or other
20 disposition had been equal to either (i) its fair market value on Janu-
21 ary first, nineteen hundred sixty-six or the date of its sale or other
22 disposition prior to January first, nineteen hundred sixty-six, plus or
23 minus all adjustments to basis made with respect to such property for
24 federal income tax purposes for periods on and after January first,
25 nineteen hundred sixty-six or (ii) the amount realized from its sale or
26 disposition, whichever is lower; provided, however, that the total
27 modification provided by this paragraph shall not exceed the amount of
28 the taxpayer's net gain from the sale or other disposition of all such
29 property.

30 (i) If the period covered by a report under this subchapter is other
31 than the period covered by the report of the United States treasury
32 department, entire net income shall be determined by multiplying the
33 federal taxable income, as adjusted pursuant to the provisions of this
34 subchapter, by the number of calendar months or major parts thereof
35 covered by the report under this subchapter and dividing by the number
36 of calendar months or major parts thereof covered by the report to such
37 department. If it shall appear that such method of determining entire
38 net income does not properly reflect the taxpayer's income during the
39 period covered by the report under this subchapter, the commissioner of
40 finance shall be authorized in his or her discretion to determine such
41 entire net income solely on the basis of the taxpayer's income during
42 the period covered by its report under this subchapter.

43 (j) In the case of property placed in service in taxable years begin-
44 ning before nineteen hundred ninety-four, for taxable years beginning
45 after December thirty-first, nineteen hundred eighty-one, except with
46 respect to property subject to the provisions of section two hundred
47 eighty-F of the internal revenue code and property subject to the
48 provisions of section one hundred sixty-eight of the internal revenue
49 code which is placed in service in this state in taxable years beginning
50 after December thirty-first, nineteen hundred eighty-four, and provided
51 a deduction has not been excluded from entire net income pursuant to
52 subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall
53 be allowed with respect to property which is subject to the provisions
54 of section one hundred sixty-eight of the internal revenue code the
55 depreciation deduction allowable under section one hundred sixty-seven
56 of the internal revenue code as such section would have applied to prop-

erty placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) In the case of qualified property described in paragraph two of subsection (k) of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection (b) of section fourteen hundred-L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of paragraph (o) of this subdivision, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty-F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(l) Upon the disposition of property to which paragraph (k) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph twelve of paragraph (a) and subparagraph sixteen of paragraph (b) of this subdivision attributable to such property.

(m) For purposes of this paragraph and paragraph (l) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection (k) of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(n) Related members expense add back. (1) For purposes of this paragraph: (i) "Related member" means a related person as defined in subpar-

1 agraph (c) of paragraph three of subsection (b) of section four hundred
2 sixty-five of the internal revenue code, except that "fifty percent"
3 shall be substituted for "ten percent".

4 (ii) "Effective rate of tax" means, as to any city, the maximum statu-
5 tory rate of tax imposed by the city on or measured by a related
6 member's net income multiplied by the allocation percentage, if any,
7 applicable to the related member under the laws of said jurisdiction.
8 For purposes of this definition, the effective rate of tax as to any
9 city is zero where the related member's net income tax liability in said
10 city is reported on a combined or consolidated return including both the
11 taxpayer and the related member where the reported transactions between
12 the taxpayer and the related member are eliminated or offset. Also, for
13 purposes of this definition, when computing the effective rate of tax
14 for a city in which a related member's net income is eliminated or
15 offset by a credit or similar adjustment that is dependent upon the
16 related member either maintaining or managing intangible property or
17 collecting interest income in that city, the maximum statutory rate of
18 tax imposed by said city shall be decreased to reflect the statutory
19 rate of tax that applies to the related member as effectively reduced by
20 such credit or similar adjustment.

21 (iii) Royalty payments are payments directly connected to the acquisi-
22 tion, use, maintenance or management, ownership, sale, exchange, or any
23 other disposition of licenses, trademarks, copyrights, trade names,
24 trade dress, service marks, mask works, trade secrets, patents and any
25 other similar types of intangible assets as determined by the commis-
26 sioner of finance, and include amounts allowable as interest deductions
27 under section one hundred sixty-three of the internal revenue code to
28 the extent such amounts are directly or indirectly for, related to or in
29 connection with the acquisition, use, maintenance or management, owner-
30 ship, sale, exchange or disposition of such intangible assets.

31 (iv) A valid business purpose is one or more business purposes, other
32 than the avoidance or reduction of taxation, which alone or in combina-
33 tion constitute the primary motivation for some business activity or
34 transaction, which activity or transaction changes in a meaningful way,
35 apart from tax effects, the economic position of the taxpayer. The
36 economic position of the taxpayer includes an increase in the market
37 share of the taxpayer, or the entry by the taxpayer into new business
38 markets.

39 (2) Royalty expense add backs. (i) Except where a taxpayer is included
40 in a combined report pursuant to section 11-654.3 of this subchapter
41 with the applicable related member, for the purpose of computing entire
42 net income or other applicable taxable basis, a taxpayer must add back
43 royalty payments directly or indirectly paid, accrued, or incurred in
44 connection with one or more direct or indirect transactions with one or
45 more related members during the taxable year to the extent deductible in
46 calculating federal taxable income.

47 (ii) Exceptions. (A) The adjustment required in this paragraph shall
48 not apply to the portion of the royalty payment that the taxpayer estab-
49 lishes, by clear and convincing evidence of the type and in the form
50 specified by the commissioner of finance, meets all of the following
51 requirements: (I) the related member was subject to tax in this city or
52 another city within the United States or a foreign nation or some combi-
53 nation thereof on a tax base that included the royalty payment paid,
54 accrued or incurred by the taxpayer; (II) the related member during the
55 same taxable year directly or indirectly paid, accrued or incurred such
56 portion to a person that is not a related member; and (III) the trans-

1 action giving rise to the royalty payment between the taxpayer and the
2 related member was undertaken for a valid business purpose.

3 (B) The adjustment required in this paragraph shall not apply if the
4 taxpayer establishes, by clear and convincing evidence of the type and
5 in the form specified by the commissioner of finance, that: (I) the
6 related member was subject to tax on or measured by its net income in
7 this city or another city within the United States, or some combination
8 thereof; (II) the tax base for said tax included the royalty payment
9 paid, accrued or incurred by the taxpayer; and (III) the aggregate
10 effective rate of tax applied to the related member in those jurisdic-
11 tions is no less than eighty percent of the statutory rate of tax that
12 applied to the taxpayer under section 11-604 of this chapter for the
13 taxable year.

14 (C) The adjustment required in this paragraph shall not apply if the
15 taxpayer establishes, by clear and convincing evidence of the type and
16 in the form specified by the commissioner of finance, that: (I) the
17 royalty payment was paid, accrued or incurred to a related member organ-
18 ized under the laws of a country other than the United States; (II) the
19 related member's income from the transaction was subject to a comprehen-
20 sive income tax treaty between such country and the United States; (III)
21 the related member was subject to tax in a foreign nation on a tax base
22 that included the royalty payment paid, accrued or incurred by the
23 taxpayer; (IV) the related member's income from the transaction was
24 taxed in such country at an effective rate of tax at least equal to that
25 imposed by this city; and (V) the royalty payment was paid, accrued or
26 incurred pursuant to a transaction that was undertaken for a valid busi-
27 ness purpose and using terms that reflect an arm's length relationship.

28 (D) The adjustment required in this paragraph shall not apply if the
29 taxpayer and the commissioner of finance agree in writing to the appli-
30 cation or use of alternative adjustments or computations. The commis-
31 sioner of finance may, in his or her discretion, agree to the applica-
32 tion or use of alternative adjustments or computations when he or she
33 concludes that in the absence of such agreement the income of the
34 taxpayer would not be properly reflected.

35 (o) In the case of a taxpayer that is not an eligible farmer as
36 defined in subsection (n) of section six hundred six of the tax law, the
37 deductions allowable under sections one hundred seventy-nine, one
38 hundred sixty-seven and one hundred sixty-eight of the internal revenue
39 code with respect to a sport utility vehicle that is not a passenger
40 automobile as defined in paragraph five of subsection (d) of section two
41 hundred eighty-F of the internal revenue code, determined as if such
42 sport utility vehicle were a passenger automobile as defined in such
43 paragraph five. For purposes of subparagraph sixteen of paragraph (b)
44 and paragraph (k) of this subdivision, the terms qualified resurgence
45 zone property and qualified New York Liberty Zone property described in
46 paragraph two of subsection b of section fourteen hundred-L of the
47 internal revenue code shall not include any sport utility vehicle that
48 is not a passenger automobile as defined in paragraph five of subsection
49 (d) of section two hundred eighty-F of the internal revenue code.

50 (p) Upon the disposition of property to which paragraph (o) of this
51 subdivision applies, the amount of any gain or loss includible in entire
52 net income shall be adjusted to reflect the inclusions and exclusions
53 from entire net income pursuant to subparagraph thirteen of paragraph
54 (a) and subparagraph seventeen of paragraph (b) of this subdivision
55 attributable to such property.

1 (q) Subtraction modification for community banks and small thrifts.
2 (1) A taxpayer that is a qualified community bank as defined in subpara-
3 graph two of this paragraph or a small thrift institution as defined in
4 subparagraph two-a of this paragraph shall be allowed a deduction in
5 computing entire net income equal to the amount computed under subpara-
6 graph three of this paragraph.

7 (2) To be a qualified community bank, a taxpayer must satisfy the
8 following conditions:

9 (i) It is a bank or trust company organized under or subject to the
10 provisions of article three of the banking law or a comparable provision
11 of the laws of another state, or a national banking association.

12 (ii) The average value during the taxable year of the assets of the
13 taxpayer, or, if the taxpayer is included in a combined report, the
14 assets of the combined reporting group of the taxpayer under section
15 11-654.3 of this subchapter, must not exceed eight billion dollars.

16 (2-a) To be a small thrift institution, a taxpayer must satisfy the
17 following conditions:

18 (i) It is a savings bank, a savings and loan association, or other
19 savings institution chartered and supervised as such under federal or
20 state law.

21 (ii) The average value during the taxable year of the assets of the
22 taxpayer, or, if the taxpayer is included in a combined report, the
23 assets of the combined reporting group of the taxpayer under section
24 11-654.3 of this subchapter, must not exceed eight billion dollars.

25 (3)(i) The subtraction modification shall be computed as follows:

26 (A) Multiply the taxpayer's net interest income from loans during the
27 taxable year by a fraction, the numerator of which is the gross interest
28 income during the taxable year from qualifying loans and the denominator
29 of which is the gross interest income during the taxable year from all
30 loans.

31 (B) Multiply the amount determined in subclause (A) of this clause by
32 fifty percent. This product is the amount of the deduction allowed under
33 this paragraph.

34 (ii)(A) Net interest income from loans shall mean gross interest
35 income from loans less gross interest expense from loans. Gross interest
36 expense from loans is determined by multiplying gross interest expense
37 by a fraction, the numerator of which is the average total value of
38 loans owned by the thrift institution or community bank during the taxa-
39 ble year and the denominator of which is the average total assets of the
40 thrift institution or community bank during the taxable year.

41 (B) Measurement of assets. For purposes of this clause: (I) Total
42 assets are those assets that are properly reflected on a balance sheet,
43 computed in the same manner as is required by the banking regulator of
44 the taxpayers included in the combined return. In addition, total assets
45 includes leased real property that is not properly reflected on a
46 balance sheet.

47 (II) Assets will only be included if the income or expenses of which
48 are properly reflected, or would have been properly reflected if not
49 fully depreciated or expensed, or depreciated or expensed to a nominal
50 amount, in the computation of the taxpayer's entire net income for the
51 taxable year. Assets will not include deferred tax assets and intangible
52 assets identified as "goodwill".

53 (III) Tangible real and personal property, such as buildings, land,
54 machinery, and equipment, shall be valued at cost. Leased real property
55 that is not properly reflected on the balance sheet will be valued at
56 the annual lease payment multiplied by eight. Intangible property, such

1 as loans and investments, shall be valued at book value exclusive of
2 reserves.

3 (IV) Average assets are computed using the assets measured on the
4 first day of the taxable year, and on the last day of each subsequent
5 quarter of the taxable year or month or day during the taxable year.

6 (iii) A qualifying loan is a loan that meets the conditions specified
7 in subclause (A) of this clause and subclause (B) of this clause.

8 (A) The loan is originated by the qualified community bank or small
9 thrift institution or purchased by the qualified community bank or small
10 thrift institution immediately after its origination in connection with
11 a commitment to purchase made by the bank or thrift institution prior to
12 the loan's origination.

13 (B) The loan is a small business loan or a residential mortgage loan,
14 the principal amount of which loan is five million dollars or less, and
15 either the borrower is located in this city as determined under section
16 11-654.2 of this subchapter and the loan is not secured by real proper-
17 ty, or the loan is secured by real property located in the city.

18 (C) A loan that meets the definition of a qualifying loan in a prior
19 taxable year, including years prior to the effective date of this para-
20 graph, remains a qualifying loan in taxable years during and after which
21 such loan is acquired by another corporation in the taxpayer's combined
22 reporting group under section 11-654.3 of this subchapter.

23 (r) A small thrift institution or a qualified community bank, as
24 defined in paragraph (q) of this subdivision, that maintained a captive
25 REIT on April first, two thousand fourteen shall utilize a REIT
26 subtraction equal to one hundred sixty percent of the dividends paid
27 deductions allowed to that captive REIT for the taxable year for federal
28 income tax purposes and shall not be allowed to utilize the subtraction
29 modification for community banks and small thrifts under paragraph (q)
30 of this subdivision or the subtraction modification for qualified resi-
31 dential loan portfolios under paragraph (s) of this subdivision in any
32 tax year in which such thrift institution or community bank maintains
33 that captive REIT.

34 (s) Subtraction modification for qualified residential loan portfo-
35 lios. (1)(i) A taxpayer that is either a thrift institution as defined
36 in subparagraph three of this paragraph or a qualified community bank as
37 defined in subparagraph two of paragraph (q) of this subdivision and
38 maintains a qualified residential loan portfolio as defined in subpara-
39 graph two of this paragraph shall be allowed as a deduction in computing
40 entire net income the amount, if any, by which (A) thirty-two percent of
41 its entire net income determined without regard to this paragraph
42 exceeds (B) the amounts deducted by the taxpayer pursuant to sections
43 one hundred sixty-six and five hundred eighty-five of the internal
44 revenue code less any amounts included in federal taxable income as a
45 result of a recovery of a loan.

46 (ii)(A) If the taxpayer is in a combined report under section 11-654.3
47 of this subchapter, this deduction will be computed on a combined basis.
48 In that instance, the entire net income of the combined reporting group
49 for purposes of this paragraph shall be multiplied by a fraction, the
50 numerator of which is the average total assets of all the thrift insti-
51 tutions and qualified community banks included in the combined report
52 and the denominator of which is the average total assets of all the
53 corporations included in the combined report.

54 (B) Measurement of assets. For purposes of this paragraph: (I) Total
55 assets are those assets that are properly reflected on a balance sheet,
56 computed in the same manner as is required by the banking regulator of

1 the taxpayers included in the combined return. In addition, total assets
2 includes leased real property that is not properly reflected on a
3 balance sheet.

4 (II) Assets will only be included if the income or expenses of which
5 are properly reflected, or would have been properly reflected if not
6 fully depreciated or expensed, or depreciated or expensed to a nominal
7 amount, in the computation of the combined group's entire net income for
8 the taxable year. Assets will not include deferred tax assets and intan-
9 gible assets identified as "goodwill".

10 (III) Tangible real and personal property, such as buildings, land,
11 machinery, and equipment shall be valued at cost. Leased real property
12 that is not properly reflected on a balance sheet will be valued at the
13 annual lease payment multiplied by eight. Intangible property, such as
14 loans and investments, shall be valued at book value exclusive of
15 reserves.

16 (IV) Intercorporate stockholdings and bills, notes and accounts
17 receivable, and other intercorporate indebtedness between the corpo-
18 rations included in the combined report shall be eliminated.

19 (V) Average assets are computed using the assets measured on the first
20 day of the taxable year, and on the last day of each subsequent quarter
21 of the taxable year or month or day during the taxable year.

22 (2) Qualified residential loan portfolio. (i) A taxpayer maintains a
23 qualified residential loan portfolio if at least sixty percent of the
24 amount of the total assets at the close of the taxable year of the
25 thrift institution or qualified community bank consists of the assets
26 described in subclauses (A) through (L) of this clause, with the appli-
27 cation of the rule in the last undesignated subclause of this clause. If
28 the taxpayer is a member of a combined group, the determination of
29 whether there is a qualified residential loan portfolio will be made by
30 aggregating the assets of the thrift institutions and qualified communi-
31 ty banks that are members of the combined group. Assets: (A) cash, which
32 includes cash and cash equivalents including cash items in the process
33 of collection, deposits with other financial institutions, including
34 corporate credit unions, balances with federal reserve banks and federal
35 home loan banks, federal funds sold, and cash and cash equivalents on
36 hand. Cash shall not include any balances serving as collateral for
37 securities lending transactions; (B) obligations of the United States or
38 of a state or political subdivision thereof, and stock or obligations of
39 a corporation which is an instrumentality or a government sponsored
40 enterprise of the United States or of a state or political subdivision
41 thereof; (C) loans secured by a deposit or share of a member; (D) loans
42 secured by an interest in real property which is, or, from the proceeds
43 of the loan, will become, residential real property or real property
44 used primarily for church purposes, loans made for the improvement of
45 residential real property or real property used primarily for church
46 purposes, provided that for purposes of this subclause, residential real
47 property shall include single or multi-family dwellings, facilities in
48 residential developments dedicated to public use or property used on a
49 nonprofit basis for residents, and mobile homes not used on a transient
50 basis; (E) property acquired through the liquidation of defaulted loans
51 described in subclause (D) of this clause; (F) any regular or residual
52 interest in a REMIC, as such term is defined in section eight hundred
53 sixty-D of the internal revenue code, but only in the proportion which
54 the assets of such REMIC consist of property described in subclauses (A)
55 through (E) of this clause, except that if ninety-five percent or more
56 of the assets of such REMIC are assets described in such subclauses, the

1 entire interest in the REMIC shall qualify; (G) any mortgage-backed
2 security which represents ownership of a fractional undivided interest
3 in a trust, the assets of which consist primarily of mortgage loans,
4 provided that the real property which serves as security for the loans
5 is, or from the proceeds of the loan, will become, the type of property
6 described in subclause (D) of this clause and any collateralized mort-
7 gage obligation, the security for which consists primarily of mortgage
8 loans that maintain as security the type of property described in
9 subclause (D) of this clause; (H) certificates of deposit in, or obli-
10 gations of, a corporation organized under a state law which specifically
11 authorizes such corporation to insure the deposits or share accounts of
12 member associations; (I) loans secured by an interest in educational,
13 health, or welfare institutions or facilities, including structures
14 designed or used primarily for residential purposes for students, resi-
15 dents, and persons under care, employees, or members of the staff of
16 such institutions or facilities; (J) loans made for the payment of
17 expenses of college or university education or vocational training; (K)
18 property used by the taxpayer in support of business which consists
19 principally of acquiring the savings of the public and investing in
20 loans; and (L) loans for which the taxpayer is the creditor and which
21 are wholly secured by loans described in subclause (D) of this clause.

22 The value of accrued interest receivable and any loss-sharing commit-
23 ment or other loan guaranty by a governmental agency will be considered
24 part of the basis in the loans to which the accrued interest or loss
25 protection applies.

26 (ii) At the election of the taxpayer, the percentage specified in
27 clause (i) of this subparagraph shall be applied on the basis of the
28 average assets outstanding during the taxable year, in lieu of the close
29 of the taxable year. The taxpayer can elect to compute an average using
30 the assets measured on the first day of the taxable year and on the last
31 day of each subsequent quarter, or month or day during the taxable year.
32 This election may be made annually.

33 (iii) For purposes of subclause (D) of clause (i) of this subpara-
34 graph, if a multifamily structure securing a loan is used in part for
35 nonresidential use purposes, the entire loan is deemed a residential
36 real property loan if the planned residential use exceeds eighty percent
37 of the property's planned use, measured, at the taxpayer's election, by
38 using square footage or gross rental revenue, and determined as of the
39 time the loan is made.

40 (iv) For purposes of subclause (D) of clause (i) of this subparagraph,
41 loans made to finance the acquisition or development of land shall be
42 deemed to be loans secured by an interest in residential real property
43 if there is a reasonable assurance that the property will become resi-
44 dential real property within a period of three years from the date of
45 acquisition of such land; provided, however, this shall not apply for
46 any taxable year unless, within such three-year period, such land
47 becomes residential real property. For purposes of determining whether
48 any interest in a REMIC qualifies under subclause (F) of clause (i) of
49 this subparagraph, any regular interest in another REMIC held by such
50 REMIC shall be treated as a loan described in subclauses (A) through (E)
51 under principles similar to the principle of such subclause (F), except
52 that if such REMICs are part of a tiered structure, they shall be treat-
53 ed as one REMIC for purposes of such subclause (F).

54 (3) For purposes of this paragraph, a "thrift institution" is a
55 savings bank, a savings and loan association, or other savings institu-
56 tion chartered and supervised as such under federal or state law.

1 (t) Subtraction modification for qualified affordable housing and low
2 income community loans.

3 (1) A taxpayer that owns a qualifying loan within the meaning of
4 clause (iii) of subparagraph two of this paragraph shall be allowed a
5 deduction in computing entire net income equal to the amount computed
6 under subparagraph two of this paragraph.

7 (2)(i) The deduction allowed in subparagraph one of this paragraph
8 shall be equal to:

9 (A) if the total average value during the taxable year of the assets
10 of the taxpayer, or if the taxpayer is included in a combined report,
11 the assets of the combined reporting group of the taxpayer under section
12 11-654.3 of this subchapter, does not exceed one hundred billion
13 dollars, the taxpayer's net interest income from qualifying loans, or

14 (B) if the total average value during the taxable year of the assets
15 of the taxpayer, or if the taxpayer is included in a combined report,
16 the assets of the combined reporting group of the taxpayer under section
17 11-654.3 of this subchapter, exceeds one hundred billion dollars but is
18 less than one hundred fifty billion dollars, the taxpayer's net interest
19 income from qualifying loans multiplied by a fraction, the numerator of
20 which is one hundred fifty billion dollars minus the total average value
21 during the taxable year of the assets of the taxpayer, or if the taxpay-
22 er is included in a combined report, the assets of the combined report-
23 ing group of the taxpayer under section 11-654.3 of this subchapter, and
24 the denominator of which is fifty billion dollars.

25 (ii)(A) Net interest income from qualifying loans shall mean the
26 taxpayer's net interest income from loans during the taxable year multi-
27 plied by a fraction, the numerator of which is the gross interest income
28 during the taxable year from qualifying loans and the denominator of
29 which is the gross interest income from all loans.

30 (B) Net interest income from loans shall mean gross interest income
31 during the taxable year from loans less gross interest expense from
32 loans. Gross interest expense from loans is determined by multiplying
33 gross interest expense by a fraction, the numerator of which is the
34 average total value of loans owned by the taxpayer during the taxable
35 year and the denominator of which is the average total assets of the
36 taxpayer for the year.

37 (C) Measurement of assets. For purposes of this paragraph:

38 (I) Total assets are those assets that are properly reflected on a
39 balance sheet, computed in the same manner as is required by the banking
40 regulator, if applicable, of the taxpayers included in the combined
41 return. In addition, total assets includes leased real property that is
42 not properly reflected on a balance sheet.

43 (II) Assets will only be included if the income or expenses of which
44 are properly reflected, or would have been properly reflected if not
45 fully depreciated or expensed, or depreciated or expensed to a nominal
46 amount, in the computation of the taxpayer's entire net income for the
47 taxable year. Assets will not include deferred tax assets and intangible
48 assets identified as "goodwill".

49 (III) Tangible real and personal property, such as buildings, land,
50 machinery, and equipment, shall be valued at cost. Leased real property
51 that is not properly reflected on a balance sheet will be valued at the
52 annual lease payment multiplied by eight. Intangible property, such as
53 loans and investments, shall be valued at book value exclusive of
54 reserves.

1 (IV) Average assets are computed using the assets measured on the
2 first day of the taxable year, and on the last day of each subsequent
3 quarter of the taxable year or month or day during the taxable year.

4 (iii) A qualifying loan is a loan that meets the conditions specified
5 in subclause (A) through subclause (E) of this clause.

6 (A) The loan is originated by the taxpayer lender or purchased by the
7 taxpayer immediately after its origination in connection with a commit-
8 ment to purchase made by the taxpayer prior to the loan's origination.

9 (B) Satisfies conditions of item (I) or (II) of this subclause.

10 (I) The loan is secured by a housing accommodation located within the
11 city, where there are rental units in such housing accommodation that
12 are qualifying units, which for purposes of this subclause, means units
13 subject to rent control, rent stabilization or to a regulatory agree-
14 ment, provided that, each such loan will be considered a qualifying loan
15 for purposes of this paragraph only in proportion to a percentage equal
16 to the number of qualifying units divided by the total number of all
17 residential and commercial units located on the site of the real proper-
18 ty securing the loan, as determined as of the date the loan is made.

19 (II) To the extent not included in item (I) of this subclause, loans
20 secured by residential real property located in a low-income community.
21 For purposes of this paragraph, low-income community areas are census
22 tracts within the city in which the poverty rate for such tract is at
23 least twenty percent and the median family income for such tract does
24 not exceed eighty percent of metropolitan area median family income.
25 This determination will be made by reference to the poverty and median
26 family income census data for application of section forty-five-D of the
27 internal revenue code.

28 (C) The loan is not treated as a qualifying loan in the computation of
29 a subtraction from entire net income pursuant to paragraph (q) of this
30 subdivision.

31 (D) If the taxpayer applies a subtraction pursuant to paragraph (r) of
32 this subdivision, the interest or net gains from the loan are not recog-
33 nized by a captive REIT as defined in section 11-601 of this chapter.

34 (E) A loan that meets the definition of a qualifying loan in a prior
35 taxable year, including years prior to the effective date of this para-
36 graph, remains a qualifying loan in taxable years during and after which
37 such loan is acquired by another corporation in the taxpayer's combined
38 reporting group under section 11-654.3 of this subchapter.

39 (iv) For purposes of this paragraph, the following terms shall mean:

40 (A) "Housing accommodations" shall mean a multiple dwelling that
41 contains at least five dwelling units together with the land on which
42 such structure is situated.

43 (B) "Regulatory agreement" shall mean a written agreement with or
44 approved by any local, municipal, state, federal or other government
45 agency that requires the provision of housing accommodations for fami-
46 lies and persons of low or moderate income, and binds the owner of such
47 real property and its successors and assigns. A regulatory agreement may
48 include such other terms and conditions as the locality, municipality,
49 state, or federal government shall determine.

50 (C) "Rent stabilization" shall mean, collectively, the rent stabiliza-
51 tion law of nineteen hundred sixty-nine, the rent stabilization code,
52 and the emergency tenant protection act of nineteen seventy-four,
53 together with any successor statutes or regulations addressing substan-
54 tially the same subject matter.

55 9. (a) The term "calendar year" means a period of twelve calendar
56 months, or any shorter period beginning on the date the taxpayer becomes

1 subject to the tax imposed by this subchapter, ending on the thirty-
2 first day of December, provided the taxpayer keeps its books on the
3 basis of such period or on the basis of any period ending on any day
4 other than the last day of a calendar month, or provided the taxpayer
5 does not keep books, and includes, in case the taxpayer changes the
6 period on the basis of which it keeps its books from a fiscal year to a
7 calendar year, the period from the close of its last old fiscal year up
8 to and including the following December thirty-first.

9 (b) The term "fiscal year" means a period of twelve calendar months,
10 or any shorter period beginning on the date the taxpayer becomes subject
11 to the tax imposed by this subchapter, ending on the last day of any
12 month other than December, provided the taxpayer keeps its books on the
13 basis of such period, and includes, in case the taxpayer changes the
14 period on the basis of which it keeps its books from a calendar year to
15 a fiscal year or from one fiscal year to another fiscal year, the period
16 from the close of its last old calendar or fiscal year up to the date
17 designated as the close of its new fiscal year.

18 10. The term "tangible personal property" means corporeal personal
19 property, such as machinery, tools, implements, goods, wares and
20 merchandise, and does not mean money, deposits in banks, shares of
21 stock, bonds, notes, credits or evidences of an interest property and
22 evidences of debt.

23 11. The term "internal revenue code" means, unless otherwise specif-
24 ically stated in this subchapter, the internal revenue code of 1986, as
25 amended.

26 12. The term "combinable captive insurance company" means an entity
27 that is treated as an association taxable as a corporation under the
28 internal revenue code:

29 (a) more than fifty percent of the voting stock of which is owned or
30 controlled, directly or indirectly, by a single entity that is treated
31 as an association taxable as a corporation under the internal revenue
32 code and not exempt from federal income tax;

33 (b) that is licensed as a captive insurance company under the laws of
34 this state or another jurisdiction;

35 (c) whose business includes providing, directly and indirectly, insur-
36 ance or reinsurance covering the risks of its parent and/or members of
37 its affiliated group; and

38 (d) fifty percent or less of whose gross receipts for the taxable year
39 consist of premiums from arrangements that constitute insurance for
40 federal income tax purposes.

41 For purposes of this subdivision, "affiliated group" has the same
42 meaning as that term is given in section fifteen hundred four of the
43 internal revenue code, except that the term "common parent corporation"
44 in that section is deemed to mean any person, as defined in section
45 seven thousand seven hundred one of the internal revenue code and refer-
46 ences to "at least eighty percent" in section fifteen hundred four of
47 the internal revenue code are to be read as "fifty percent or more;"
48 section fifteen hundred four of the internal revenue code is to be read
49 without regard to the exclusions provided for in subsection (b) of that
50 section; "premiums" has the same meaning as that term is given in para-
51 graph one of subdivision (c) of section fifteen hundred ten of the tax
52 law, except that it includes consideration for annuity contracts and
53 excludes any part of the consideration for insurance, reinsurance or
54 annuity contracts that do not provide bona fide insurance, reinsurance
55 or annuity benefits; and "gross receipts" includes the amounts included
56 in gross receipts for purposes of paragraph fifteen of subsection (c) of

1 section five hundred one of the internal revenue code, except that those
2 amounts also include all premiums as defined in this subdivision.

3 13. The term "partnership" includes a syndicate, group, pool, joint
4 venture, or other unincorporated organization, through or by means of
5 which any business, financial operation, or venture is carried on, and
6 which is not a corporation as defined in subdivision one of this
7 section, or a trust or estate that is separate from its owner under part
8 one of subchapter J of chapter one of subtitle A of the internal revenue
9 code; and the term "partner" includes a member in such syndicate, group,
10 pool, joint venture, or organization.

11 § 11-653 Imposition of tax; exemptions. 1. (a) For the privilege of
12 doing business, or of employing capital, or of owning or leasing proper-
13 ty in the city in a corporate or organized capacity, or of maintaining
14 an office in the city, or of deriving receipts from activity in the
15 city, for all or any part of each of its fiscal or calendar years, every
16 domestic or foreign corporation, except corporations specified in subdivi-
17 sion four of this section, shall annually pay a tax, upon the basis of
18 its business income, or upon such other basis as may be applicable as
19 hereinafter provided, for such fiscal or calendar year or part thereof,
20 on a report which shall be filed, except as hereinafter provided, on or
21 before the fifteenth day of March next succeeding the close of each such
22 year, or, in the case of a taxpayer which reports on the basis of a
23 fiscal year, within two and one-half months after the close of such
24 fiscal year, and shall be paid as hereinafter provided.

25 (b) A corporation is deriving receipts from activity in the city if it
26 has receipts within the city of one million dollars or more in a taxable
27 year. For purposes of this section, the term "receipts" means the
28 receipts that are subject to the allocation rules set forth in section
29 11-654.2 of this subchapter, and the term "receipts within the city"
30 means the receipts included in the numerator of the receipts fraction
31 determined under section 11-654.2 of this subchapter. For purposes of
32 this paragraph, receipts from processing credit card transactions for
33 merchants include merchant discount fees received by the corporation.

34 (c) A corporation is doing business in the city if (1) it has issued
35 credit cards to one thousand or more customers who have a mailing
36 address within the city as of the last day of its taxable year, (2) it
37 has merchant customer contracts with merchants and the total number of
38 locations covered by those contracts equals one thousand or more
39 locations in the city to whom the corporation remitted payments for
40 credit card transactions during the taxable year, or (3) the sum of the
41 number of customers described in subparagraph one of this paragraph plus
42 the number of locations covered by its contracts described in subpara-
43 graph two of this paragraph equals one thousand or more. As used in this
44 subdivision, the term "credit card" includes bank, credit, travel and
45 entertainment cards.

46 (d)(1) A corporation with less than one million dollars but at least
47 ten thousand dollars of receipts within the city in a taxable year that
48 is part of a unitary group that meets the ownership test under section
49 11-654.3 of this subchapter is deriving receipts from activity in the
50 city if the receipts within the city of the members of the unitary group
51 that have at least ten thousand dollars of receipts within the city in
52 the aggregate meet the threshold set forth in paragraph (b) of this
53 subdivision.

54 (2) A corporation that does not meet any of the thresholds set forth
55 in paragraph (c) of this subdivision but has at least ten customers, or
56 locations, or customers and locations, as described in paragraph (c) of

1 this subdivision, and is part of a unitary group that meets the owner-
2 ship test under section 11-654.3 of this subchapter, is doing business
3 in the city if the number of customers, locations, or customers and
4 locations, within the city of the members of the unitary group that have
5 at least ten customers, locations, or customers and locations, within
6 the city in the aggregate meets any of the thresholds set forth in para-
7 graph (c) of this subdivision.

8 (3) For purposes of this paragraph, any corporation described in para-
9 graph (c) of subdivision two of section 11-654.3 of this subchapter
10 shall not be considered.

11 (e) At the end of each year, the commissioner shall review the cumula-
12 tive percentage change in the consumer price index. The commissioner
13 shall adjust the receipt thresholds set forth in this subdivision if the
14 consumer price index has changed by ten percent or more since January
15 first, two thousand twenty-two, or since the date that the thresholds
16 were last adjusted under this subdivision. The thresholds shall be
17 adjusted to reflect the cumulative percentage change in the consumer
18 price index. The adjusted thresholds shall be rounded to the nearest one
19 thousand dollars. As used in this paragraph, "consumer price index"
20 means the consumer price index for all urban consumers (CPI-U) available
21 from the bureau of labor statistics of the United States department of
22 labor. Any adjustment shall apply to tax periods that begin after the
23 adjustment is made.

24 (f) If a partnership is doing business, employing capital, owning or
25 leasing property in the city, or maintaining an office in the city, or
26 deriving receipts from activity in the city, any corporation that is a
27 partner in such partnership shall be subject to tax under this subchap-
28 ter as described in the regulations of the commissioner of finance.

29 2. A foreign corporation shall not be deemed to be doing business,
30 employing capital, owning or leasing property, or maintaining an office
31 in the city, or deriving receipts from activity in the city, for the
32 purposes of this subchapter, by reason of:

33 (a) the maintenance of cash balances with banks or trust companies in
34 the city, or

35 (b) the ownership of shares of stock or securities kept in the city,
36 if kept in a safe deposit box, safe, vault or other receptacle rented
37 for the purpose, or if pledged as collateral security, or if deposited
38 with one or more banks or trust companies, or brokers who are members of
39 a recognized security exchange, in safekeeping or custody accounts, or

40 (c) the taking of any action by any such bank or trust company or
41 broker, which is incidental to the rendering of safekeeping or custodian
42 service to such corporation, or

43 (d) the maintenance of an office in the city by one or more officers
44 or directors of the corporation who are not employees of the corporation
45 if the corporation otherwise is not doing business in the city, and does
46 not employ capital or own or lease property in the city, or

47 (e) the keeping of books or records of a corporation in the city if
48 such books or records are not kept by employees of such corporation and
49 such corporation does not otherwise do business, employ capital, own or
50 lease property or maintain an office in the city, or

51 (f) any combination of such activities.

52 2-a. An alien corporation shall not be deemed to be doing business,
53 employing capital, owning or leasing property, or maintaining an office
54 in the city, or deriving receipts from activity in the city, for the
55 purposes of this subchapter, if its activities in the city are limited
56 solely to:

1 (a) investing or trading in stocks and securities for its own account
2 within the meaning of clause (ii) of subparagraph (A) of paragraph (2)
3 of subsection (b) of section eight hundred sixty-four of the internal
4 revenue code, or:

5 (b) investing or trading in commodities for its own account within the
6 meaning of clause (ii) of subparagraph (B) of paragraph (2) of
7 subsection (b) of section eight hundred sixty-four of the internal
8 revenue code, or

9 (c) any combination of activities described in paragraphs (a) and (b)
10 of this subdivision.

11 An alien corporation that under any provision of the internal revenue
12 code is not treated as a "domestic corporation" as defined in section
13 seven thousand seven hundred one of such code and has no effectively
14 connected income for the taxable year pursuant to clause three of the
15 opening paragraph of subdivision eight of section 11-652 of this
16 subchapter shall not be subject to tax under this subchapter for that
17 taxable year. For purposes of this subchapter, an alien corporation is a
18 corporation organized under the laws of a country, or any political
19 subdivision thereof, other than the United States, or organized under
20 the laws of a possession, territory or commonwealth of the United
21 States.

22 3. Any receiver, referee, trustee, assignee or other fiduciary, or any
23 officer or agent appointed by any court, who conducts the business of
24 any corporation, shall be subject to the tax imposed by this subchapter
25 in the same manner and to the same extent as if the business were
26 conducted by the agents or officers of such corporation. A dissolved
27 corporation which continues to conduct business shall also be subject to
28 the tax imposed by this subchapter.

29 4. (a) Corporations subject to tax under chapter eleven of this title,
30 any trust company organized under a law of this state all of the stock
31 of which is owned by not less than twenty savings banks organized under
32 a law of this state, housing companies organized and operating pursuant
33 to the provisions of article two of the private housing finance law,
34 housing development fund companies organized pursuant to the provisions
35 of article eleven of the private housing finance law, corporations
36 described in section three of the tax law, a corporation principally
37 engaged in the operation of marine vessels whose activities in the city
38 are limited exclusively to the use of property in interstate or foreign
39 commerce, provided, however, such a corporation will not be subject to
40 tax under this subchapter solely because it maintains an office in the
41 city, or employs capital in the city, in connection with such use of
42 property, a corporation principally engaged in the conduct of a ferry
43 business and operating between any of the boroughs of the city under a
44 lease granted by the city and a corporation principally engaged in the
45 conduct of an aviation, steamboat, ferry or navigation business, or two
46 or more of such businesses, all of the capital stock of which is owned
47 by a municipal corporation of this state, shall not be subject to tax
48 under this subchapter; provided, however, that any corporation, other
49 than (1) a utility corporation subject to the supervision of the state
50 department of public service, and (2) for taxable years beginning on or
51 after August first, two thousand two, a utility as defined in subdivi-
52 sion six of section 11-1101 of this title, which is subject to tax under
53 chapter eleven of this title as a vendor of utility services, shall be
54 subject to tax under this subchapter, but in computing the tax imposed
55 by this section pursuant to the provisions of clause (i) of subparagraph
56 one of paragraph (e) of subdivision one of section 11-654 of this

1 subchapter, business income allocated to the city pursuant to paragraph
2 (a) of subdivision three of such section shall be reduced by the
3 percentage which such corporation's gross operating income subject to
4 tax under chapter eleven of this title is of its gross operating income.

5 (b) The term "gross operating income", when used in paragraph (a) of
6 this subdivision, means receipts received in or by reason of any trans-
7 action had and consummated in the city, including cash, credits and
8 property of any kind or nature, whether or not such transaction is made
9 for profit, without any deduction therefrom on account of the cost of
10 the property sold, the cost of materials used, labor or other services,
11 delivery costs or any other costs whatsoever, interest or discount paid
12 or any other expenses whatsoever.

13 (c) If it shall appear to the commissioner of finance that the appli-
14 cation of the provisions of paragraph (a) of this subdivision, does not
15 fairly and equitably reflect the portion of the taxpayer's business
16 income allocable to the city which is attributable to its city activ-
17 ities which are not taxable under chapter eleven of this title, the
18 commissioner of finance may prescribe other means or methods of deter-
19 mining such portion, including the use of the books and records of the
20 taxpayer, if the commissioner of finance finds that such means or meth-
21 ods used in keeping them fairly and equitably reflect such portion.

22 5. Intentionally omitted.

23 6. Intentionally omitted.

24 7. For any taxable year of a real estate investment trust, as defined
25 in section eight hundred fifty-six of the internal revenue code, in
26 which such trust is subject to federal income taxation under section
27 eight hundred fifty-seven of such code, such trust shall be subject to a
28 tax computed under either clause (i) of subparagraph one of paragraph
29 (e) of subdivision one of section 11-654 of this subchapter, or clause
30 (iv), whichever is greater. In the case of such a real estate investment
31 trust, including a captive REIT as defined in section 11-601 of this
32 chapter, the term "entire net income" means "real estate investment
33 trust taxable income" as defined in paragraph two of subdivision (b) of
34 section eight hundred fifty-seven, as modified by section eight hundred
35 fifty-eight, of the internal revenue code plus the amount taxable under
36 paragraph three of subdivision (b) of section eight hundred fifty-seven
37 of such code, subject to the modifications required by subdivision eight
38 of section 11-652 of this subchapter including the modifications
39 required by paragraphs (d) and (e) of subdivision three of section
40 11-654 of this subchapter.

41 8. For any taxable year of a regulated investment company, as defined
42 in section eight hundred fifty-one of the internal revenue code, in
43 which such company is subject to federal income taxation under section
44 eight hundred fifty-two of such code, such company shall be subject to a
45 tax computed under either clause one or four of subparagraph (a) of
46 paragraph E of subdivision one of section 11-654 of this subchapter,
47 whichever is greater. In the case of such a regulated investment compa-
48 ny, including a captive RIC as defined in section 11-601 of this chap-
49 ter, the term "entire net income" used in subdivision one of this
50 section means "investment company taxable income" as defined in para-
51 graph two of subdivision (b) of section eight hundred fifty-two, as
52 modified by section eight hundred fifty-five, of the internal revenue
53 code plus the amount taxable under paragraph three of subdivision (b) of
54 section eight hundred fifty-two of such code subject to the modifica-
55 tions required by subdivision eight of section 11-652 of this subchap-

1 ter, including the modification required by paragraphs (d) and (e) of
2 subdivision three of section 11-654 of this subchapter.

3 9. An organization described in paragraph two or twenty-five of
4 subsection (c) of section five hundred one of the internal revenue code
5 shall be exempt from all taxes imposed by this subchapter.

6 § 11-654 Computation of tax. 1. (a) Intentionally omitted.

7 (b) Intentionally omitted.

8 (c) Intentionally omitted.

9 (d) Intentionally omitted.

10 (e) The tax imposed by subdivision one of section 11-653 of this
11 subchapter shall be, in the case of each taxpayer:

12 (1) whichever of the following amounts is the greatest:

13 (i) an amount computed on its business income or the portion of such
14 business income allocated within the city as hereinafter provided,
15 subject to the application of paragraphs (j) and (k) of this subdivision
16 and any modification required by paragraphs (d) and (e) of subdivision
17 three of this section, at the rate of (1) nine per centum for financial
18 corporations, as defined in this clause, or (2) eight and eighty-five
19 one hundredths per centum for all other corporations. For purposes of
20 this clause, "financial corporation" means a corporation or, if the
21 corporation is included in a combined group, a combined group, that (A)
22 has total assets reflected on its balance sheet at the end of its taxa-
23 ble year in excess of one hundred billion dollars, computed under gener-
24 ally accepted accounting principles and (B)(I) allocates more than fifty
25 percent of the receipts included in the denominator of its receipts
26 fraction, determined under section 11-654.2 of this subchapter, pursuant
27 to subdivision five of section 11-654.2 of this subchapter for its taxa-
28 ble year, or (II) is itself or is included in a combined group in which
29 more than fifty percent of the total assets reflected on its balance
30 sheet at the end of its taxable year are held by one or more corpo-
31 rations that are classified as (a) registered under state law as a bank
32 holding company or registered under the Federal Bank Holding Company Act
33 of 1956 (12 U.S.C. § 1841, et seq., as amended), or registered as a
34 savings and loan holding company under the Federal National Housing Act
35 (12 U.S.C. 1701, as amended), (b) a national bank organized and existing
36 as a national bank association pursuant to the provisions of the
37 National Bank Act, 12 U.S.C. 21 et. seq., (c) a savings association or
38 federal savings bank as defined in the Federal Deposit Insurance Act, 12
39 U.S.C. § 1813(b)(1), (d) a bank, savings association, or thrift institu-
40 tion incorporated or organized under the laws of any state, (e) a corpo-
41 ration organized under the provisions of 12 U.S.C. §§ 611 to 631, (f) an
42 agency or branch or a foreign depository as defined in 12 U.S.C. § 3101,
43 (g) a registered securities or commodities broker or dealer registered
44 as such by the securities and exchange commission or the commodities
45 futures trading commission, which shall include an OTC derivatives deal-
46 er as defined under regulations of the securities and exchange commis-
47 sion at title 17, part 240, section 3b-12 of the code of federal regu-
48 lations (17 CFR 240.3b-12), or (h) any corporation whose voting stock is
49 more than fifty percent owned, directly or indirectly, by any person or
50 business entity described in subitems (a) through (g) of this item,
51 other than an insurance company taxable under article thirty-three of
52 the tax law; or

53 (ii) an amount computed by multiplying its total business capital, or
54 the portion thereof allocated within the city, as hereinafter provided,

55 (A) except as provided in subclauses (B) and (C) of this clause, by
56 fifteen one-hundredths per centum;

1 (B) in the case of a cooperative housing corporation as defined in the
2 internal revenue code, by four one-hundredths per centum;

3 (C) in the case of the portion of total business capital directly
4 attributable to a corporation that is or would be taxable under chapter
5 eleven of this title, except for a vendor of utility services that is
6 taxable under both chapter eleven of this title and this subchapter, or
7 a corporation that would have been taxable as an insurance corporation
8 under former part IV, title R, chapter forty-six of the administrative
9 code of the city of New York as in effect on June thirtieth, nineteen
10 hundred seventy-four, by seven and one-half one-hundredths per centum;
11 and

12 (D) subtracting ten thousand dollars from the sum of the amount of tax
13 computed pursuant to subclauses (A), (B) and (C) of this clause,
14 provided that if such amount of tax is less than zero it shall be deemed
15 to be zero; and

16 (E) provided that in no event shall the amount of tax computed pursu-
17 ant to subclause (D) of this clause on the taxpayer's total business
18 capital, or the portion thereof allocated within the city, exceed ten
19 million dollars, or

20 (iii) Intentionally omitted.

21 (iv) If New York city receipts are: Fixed dollar minimum

	Fixed dollar minimum tax is:
22 Not more than \$100,000	\$25
23 More than \$100,000 but not over \$250,000	\$75
24 More than \$250,000 but not over \$500,000	\$175
25 More than \$500,000 but not over \$1,000,000	\$500
26 More than \$1,000,000 but not over \$5,000,000	\$1,500
27 More than \$5,000,000 but not over \$25,000,000	\$3,500
28 More than \$25,000,000 but not over \$50,000,000	\$5,000
29 More than \$50,000,000 but not over \$100,000,000	\$10,000
30 More than \$100,000,000 but not over \$250,000,000	\$20,000
31 More than \$250,000,000 but not over \$500,000,000	\$50,000
32 More than \$500,000,000 but not over \$1,000,000,000	\$100,000
33 Over \$1,000,000,000	\$200,000

34
35 For purposes of this clause, New York city receipts are the receipts
36 computed in accordance with section 11-654.2 of this subchapter for the
37 taxable year. If the taxable year is less than twelve months, the amount
38 prescribed by this clause shall be reduced by twenty-five percent if the
39 period for which the taxpayer is subject to tax is more than six months
40 but not more than nine months and by fifty percent if the period for
41 which the taxpayer is subject to tax is not more than six months. If the
42 taxable year is less than twelve months, the amount of New York city
43 receipts for purposes of this clause is determined by dividing the
44 amount of the receipts for the taxable year by the number of months in
45 the taxable year and multiplying the result by twelve.

46 (f) Intentionally omitted.

47 (g) Intentionally omitted.

48 (h) Intentionally omitted.

49 (i) Intentionally omitted.

50 (j) (1) If the amount of business income allocated within the city as
51 hereinafter provided is less than one million dollars, the amount
52 computed in clause (i) of subparagraph one of paragraph (e) of this
53 subdivision shall be at the rate of six and five-tenths per centum of
54 the amount of business income allocated within the city as hereinafter

1 provided, subject to any modification required by paragraphs (d) and (e)
2 of subdivision three of this section;

3 (2) Subject to subparagraph three of this paragraph, if the amount of
4 business income allocated within the city as hereinafter provided is one
5 million dollars or greater but less than one million five hundred thou-
6 sand dollars, the amount computed in clause (i) of subparagraph one of
7 paragraph (e) of this subdivision shall be at the rate of (i) six and
8 five-tenths per centum, plus (ii) two and thirty-five one-hundredths per
9 centum multiplied by a fraction the numerator of which is allocated
10 business income less one million dollars and the denominator of which is
11 five hundred thousand dollars, of the amount of business income allo-
12 cated within the city as hereinafter provided, subject to any modifica-
13 tion required by paragraphs (d) and (e) of subdivision three of this
14 section;

15 (3) Provided, however, notwithstanding anything to the contrary, if
16 the amount of business income before allocation is two million dollars
17 or greater but less than three million dollars, the rate of tax provided
18 for in this paragraph shall not be less than (i) six and five-tenths per
19 centum, plus (ii) two and thirty-five one-hundredths per centum multi-
20 plied by a fraction the numerator of which is business income before
21 allocation less two million dollars and the denominator of which is one
22 million dollars, and provided, however, notwithstanding anything to the
23 contrary, if the amount of business income before allocation is three
24 million dollars or greater, the rate of tax shall be eight and eighty-
25 five one-hundredths per centum or, in the case of a financial corpo-
26 ration, as defined in clause (i) of subparagraph one of paragraph (e) of
27 subdivision one of section 11-654, if the amount of business income
28 before allocation is three million dollars or greater the rate of tax
29 shall be nine per centum.

30 (k)(1) For qualified New York manufacturing corporations as defined in
31 subparagraph four of this paragraph, if the amount of business income
32 allocated within the city as hereinafter provided is less than ten
33 million dollars, the amount computed in clause (i) of subparagraph one
34 of paragraph (e) of this subdivision shall be at the rate of four and
35 four hundred twenty-five one thousandths per centum, of its business
36 income allocated within the city as hereinafter provided, subject to any
37 modification required by paragraphs (d) and (e) of subdivision three of
38 this section;

39 (2) Subject to subparagraph three of this paragraph for qualified New
40 York manufacturing corporations as defined in subparagraph four of this
41 paragraph, if the amount of business income allocated within the city as
42 hereinafter provided is ten million dollars or greater but less than
43 twenty million dollars, the amount computed in clause (i) of subpara-
44 graph one of paragraph (e) of this subdivision shall be at the rate of
45 (i) four and four hundred twenty-five one-thousandths per centum, plus
46 (ii) four and four hundred twenty-five one-thousandths per centum multi-
47 plied by a fraction the numerator of which is allocated business income
48 less ten million dollars and the denominator of which is ten million
49 dollars, of its business income or the portion of such business income
50 allocated within the city as hereinafter provided, subject to any
51 modification required by paragraphs (d) and (e) of subdivision three of
52 this section;

53 (3) Notwithstanding anything to the contrary, if the amount of busi-
54 ness income before allocation is twenty million dollars or greater but
55 less than forty million dollars, the rate of tax provided for in this
56 paragraph shall not be less than (i) four and four hundred twenty-five

1 one-thousandths per centum, plus (ii) four and four hundred twenty-five
2 one-thousandths per centum multiplied by a fraction the numerator of
3 which is business income before allocation less twenty million dollars
4 and the denominator of which is twenty million dollars, and provided,
5 however, notwithstanding anything to the contrary, if the amount of
6 business income before allocation is forty million dollars or greater,
7 the rate of tax shall be eight and eighty-five one-hundredths per
8 centum.

9 (4)(i) As used in this subparagraph, the term "manufacturing corpo-
10 ration" means a corporation principally engaged in the manufacturing and
11 sale thereof of tangible personal property; and the term "manufacturing"
12 includes the process, including the assembly process (A) of working raw
13 materials into wares suitable for use or (B) which gives new shapes, new
14 qualities or new combinations to matter which already has gone through
15 some artificial process, by the use of machinery, tools, appliances and
16 other similar equipment. Moreover, in the case of a combined report, a
17 combined group shall be considered a "manufacturing corporation" for
18 purposes of this subparagraph only if the combined group during the
19 taxable year is principally engaged in the activities set forth in this
20 paragraph, or any combination thereof. A taxpayer or, in the case of a
21 combined report, a combined group, shall be "principally engaged" in
22 activities described in this subparagraph if, during the taxable year,
23 more than fifty percent of the gross receipts of the taxpayer or
24 combined group, respectively, are derived from receipts from the sale of
25 goods produced by such activities. In computing a combined group's gross
26 receipts, intercorporate receipts shall be eliminated.

27 (ii) A "qualified New York manufacturing corporation" is a manufactur-
28 ing corporation that has property in the state that is described in
29 subparagraph five of this paragraph and either (A) the adjusted basis of
30 such property for New York state tax purposes at the close of the taxa-
31 ble year is at least one million dollars or (B) more than fifty percent
32 of its real and personal property is located in the state.

33 (5) For purposes of subclause (A) of clause (ii) of subparagraph four
34 of this paragraph, property includes tangible personal property and
35 other tangible property, including buildings and structural components
36 of buildings, which are: depreciable pursuant to section one hundred
37 sixty-seven of the internal revenue code, have a useful life of four
38 years or more, are acquired by purchase as defined in subsection (d) of
39 section one hundred seventy-nine of the internal revenue code, have a
40 situs in the state and are principally used by the taxpayer in the
41 production of goods by manufacturing. Property used in the production of
42 goods shall include machinery, equipment or other tangible property
43 which is principally used in the repair and service of other machinery,
44 equipment or other tangible property used principally in the production
45 of goods and shall include all facilities used in the production opera-
46 tion, including storage of material to be used in production and of the
47 products that are produced.

48 2. The amount of investment capital and business capital shall be
49 determined by taking the average value of the gross assets included
50 therein, less liabilities deductible therefrom pursuant to the
51 provisions of subdivisions four and six of section 11-652 of this
52 subchapter, and, if the period covered by the report is other than a
53 period of twelve calendar months, by multiplying such value by the
54 number of calendar months or major parts thereof included in such peri-
55 od, and dividing the product thus obtained by twelve. For purposes of
56 this subdivision, real property and marketable securities shall be

1 valued at fair market value and the value of personal property other
2 than marketable securities shall be the value thereof shown on the books
3 and records of the taxpayer in accordance with generally accepted
4 accounting principles.

5 3. The portion of the business income of a taxpayer to be allocated to
6 the city shall be determined as follows:

7 (a) multiply its business income by a business allocation percentage
8 to be determined by:

9 (1) ascertaining the percentage which the average value of the taxpay-
10 er's real and tangible personal property, whether owned or rented to it,
11 within the city during the period covered by its report bears to the
12 average value of all the taxpayer's real and tangible personal property,
13 whether owned or rented to it, wherever situated during such period. For
14 the purpose of this subparagraph, the term "value of the taxpayer's real
15 and tangible personal property" shall mean the adjusted bases of such
16 properties for federal income tax purposes, except that in the case of
17 rented property such value shall mean the product of (i) eight and (ii)
18 the gross rents payable for the rental of such property during the taxa-
19 ble year; provided, however, that the taxpayer may make a one-time,
20 revocable election, pursuant to regulations promulgated by the commis-
21 sioner of finance to use fair market value as the value of all of its
22 real and tangible personal property, provided that such election is made
23 on or before the due date for filing a report under section 11-655 of
24 this subchapter for the taxpayer's first taxable year commencing on or
25 after January first, two thousand fifteen and provided that such
26 election shall not apply to any taxable year with respect to which the
27 taxpayer is included on a combined report unless each of the taxpayers
28 included on such report has made such an election which remains in
29 effect for such year or to any taxpayer that was subject to tax under
30 subchapter two of this chapter and did not have an election in effect
31 under subparagraph one of paragraph (a) of subdivision three of section
32 11-604 of this chapter on December thirty-first, two thousand fourteen;

33 (2) ascertaining the percentage determined under section 11-654.2 of
34 this subchapter;

35 (3) ascertaining the percentage of the total wages, salaries and other
36 personal service compensation, similarly computed, during such period of
37 employees within the city, except general executive officers, to the
38 total wages, salaries and other personal service compensation, similarly
39 computed, during such period of all the taxpayer's employees within and
40 without the city, except general executive officers; and

41 (4) adding together the percentages so determined and dividing the
42 result by the number of percentages.

43 (5) Intentionally omitted.

44 (6) Intentionally omitted.

45 (7) Intentionally omitted.

46 (8) Intentionally omitted.

47 (9) Intentionally omitted.

48 (10) Notwithstanding subparagraphs one through four of this paragraph,
49 the business allocation percentage, to the extent that it is computed by
50 reference to the percentages determined under subparagraphs one, two and
51 three of this paragraph, shall be computed in the manner set forth in
52 this subparagraph.

53 (i) Intentionally omitted.

54 (ii) Intentionally omitted.

55 (iii) Intentionally omitted.

56 (iv) Intentionally omitted.

- 1 (v) Intentionally omitted.
2 (vi) Intentionally omitted.
3 (vii) For taxable years beginning in two thousand fifteen, the busi-
4 ness allocation percentage shall be determined by adding together the
5 following percentages:
6 (A) the product of ten percent and the percentage determined under
7 subparagraph one of this paragraph;
8 (B) the product of eighty percent and the percentage determined under
9 subparagraph two of this paragraph; and
10 (C) the product of ten percent and the percentage determined under
11 subparagraph three of this paragraph.
12 (viii) For taxable years beginning in two thousand sixteen, the busi-
13 ness allocation percentage shall be determined by adding together the
14 following percentages:
15 (A) the product of six and one-half percent and the percentage deter-
16 mined under subparagraph one of this paragraph;
17 (B) the product of eighty-seven percent and the percentage determined
18 under subparagraph two of this paragraph; and
19 (C) the product of six and one-half percent and the percentage deter-
20 mined under subparagraph three of this paragraph.
21 (ix) For taxable years beginning in two thousand seventeen, the busi-
22 ness allocation percentage shall be determined by adding together the
23 following percentages:
24 (A) the product of three and one-half percent and the percentage
25 determined under subparagraph one of this paragraph;
26 (B) the product of ninety-three percent and the percentage determined
27 under subparagraph two of this paragraph; and
28 (C) the product of three and one-half percent and the percentage
29 determined under subparagraph three of this paragraph.
30 (x) For taxable years beginning after two thousand seventeen, the
31 business allocation percentage shall be the percentage determined under
32 subparagraph two of this paragraph.
33 (xi) The commissioner of finance shall promulgate rules necessary to
34 implement the provisions of this subparagraph under such circumstances
35 where any of the percentages to be determined under subparagraph one,
36 two or three of this paragraph cannot be determined because the taxpayer
37 has no property, receipts or wages within or without the city.
38 (xii) Notwithstanding the provisions of clauses (viii), (ix), and (x)
39 of this subparagraph, for taxable years beginning on or after January
40 first, two thousand eighteen, a taxpayer that has fifty million dollars
41 or less of receipts allocated to the city as determined under section
42 11-654.2 of this subchapter, or, if the taxpayer is included in a
43 combined group, a combined group that has fifty million dollars or less
44 of receipts allocated to the city as determined under section 11-654.2
45 of this subchapter, may make a one-time election to determine its busi-
46 ness allocation percentage by adding together the following percentages:
47 (A) the product of three and one-half percent and the percentage
48 determined under subparagraph one of this paragraph;
49 (B) the product of ninety-three percent and the percentage determined
50 under subparagraph two of this paragraph; and
51 (C) the product of three and one-half percent and the percentage
52 determined under subparagraph three of this paragraph.
53 The election provided for in this clause must be made on an original
54 or amended report filed pursuant to section 11-655 of this subchapter
55 for the taxpayer's or, if the taxpayer is included in a combined group,
56 the combined group's, first taxable year commencing on or after January

1 first, two thousand eighteen and shall remain in effect until revoked by
2 the taxpayer, or if the taxpayer is included in a combined group, the
3 combined group. An election shall be revoked under this clause on an
4 original or amended report filed pursuant to section 11-655 of this
5 subchapter for the taxpayer's, or if the taxpayer is included in a
6 combined group, the combined group's, first taxable year with respect to
7 which such revocation is to be effective. If the taxpayer is a member of
8 a combined group, an election or revocation by the taxpayer under this
9 clause shall apply to all members of the combined group.

10 (11) A foreign air carrier described in the first sentence of subpara-
11 graph one of paragraph (c-1) of subdivision eight of section 11-652 of
12 this subchapter shall determine its business allocation percentage
13 pursuant to subparagraphs one through four of this paragraph, as modi-
14 fied by subparagraph ten of this paragraph, except that the numerators
15 and denominators involved in such computation shall exclude property to
16 the extent employed in generating income excluded from entire net income
17 for the taxable year pursuant to paragraph (c-1) of subdivision eight of
18 section 11-652 of this subchapter, exclude such receipts as are excluded
19 from entire net income for the taxable year pursuant to paragraph (c-1)
20 of subdivision eight of section 11-652 of this subchapter, and exclude
21 wages, salaries or other personal service compensation which are direct-
22 ly attributable to the generation of income excluded from entire net
23 income for the taxable year pursuant to paragraph (c-1) of subdivision
24 eight of section 11-652 of this subchapter.

25 (b) Intentionally omitted.

26 (c) Intentionally omitted.

27 (d) In any taxable year when property is sold or otherwise disposed
28 of, with respect to which a deduction has been allowed pursuant to
29 subparagraph one or two of paragraph (d) of subdivision three of section
30 11-604 of this chapter or subdivision (k) of section 11-641 of this
31 chapter in any period in which the taxpayer was subject to tax under
32 subchapter two of this chapter, the gain or loss thereon entering into
33 the computation of federal taxable income shall be disregarded in
34 computing entire net income, and there shall be added to or subtracted
35 from the portion of entire net income allocated within the city the gain
36 or loss upon such sale or other disposition. In computing such gain or
37 loss the basis of the property sold or disposed of shall be adjusted to
38 reflect the deduction allowed with respect to such property pursuant to
39 subparagraph one or two of paragraph (d) of subdivision three of section
40 11-604 of this chapter. Provided, however, that no loss shall be recog-
41 nized for the purposes of this subparagraph with respect to a sale or
42 other disposition of property to a person whose acquisition thereof is
43 not a purchase as defined in subsection (d) of section one hundred
44 seventy-nine of the internal revenue code.

45 (e) In any taxable year when property is sold or otherwise disposed
46 of, with respect to which a deduction has been allowed pursuant to
47 subparagraph one or two of paragraph (e) of subdivision three of section
48 11-604 of this chapter in any period the taxpayer was subject to tax
49 under subchapter two of this chapter, the gain or loss thereon entering
50 into the computation of federal taxable income shall be disregarded in
51 computing entire net income, and there shall be added to or subtracted
52 from the portion of entire net income allocated within the city the gain
53 or loss upon such sale or other disposition. In computing such gain or
54 loss the basis of the property sold or disposed of shall be adjusted to
55 reflect the deduction allowed with respect to such property pursuant to
56 subparagraph one or two of paragraph (e) of subdivision three of section

1 11-604 of this chapter. Provided, however, that no loss shall be recog-
2 nized for the purposes of this subparagraph with respect to a sale or
3 other disposition of property to a person whose acquisition thereof is
4 not a purchase as defined in subsection (d) of section one hundred
5 seventy-nine of the internal revenue code.

6 4. The portion of the business capital of a taxpayer to be allocated
7 within the city shall be determined by multiplying the amount thereof by
8 the business allocation percentage determined as hereinabove provided.

9 4-a. A corporation that is a partner in a partnership shall compute
10 tax under this subchapter using any method required or permitted in
11 regulations of the commissioner of finance.

12 5. Intentionally omitted.

13 6. Intentionally omitted.

14 7. Intentionally omitted.

15 8. Intentionally omitted.

16 9. If it shall appear to the commissioner of finance that any business
17 allocation percentage determined as hereinabove provided does not prop-
18 erly reflect the activity, business, income or capital of a taxpayer
19 within the city, the commissioner of finance shall be authorized in his
20 or her discretion to adjust it, or the taxpayer may request that the
21 commissioner of finance adjust it, by (a) excluding one or more of the
22 factors therein, (b) including one or more other factors, such as
23 expenses, purchases, contract values, minus subcontract values, (c)
24 excluding one or more assets in computing such allocation percentage,
25 provided the income therefrom, is also excluded in determining entire
26 net income, or (d) any other similar or different method calculated to
27 effect a fair and proper allocation of the income and capital reasonably
28 attributable to the city. The party seeking the adjustment shall bear
29 the burden of proof to demonstrate that the business allocation percent-
30 age determined pursuant to this section does not result in a proper
31 reflection of the taxpayer's income or capital within the city and that
32 the proposed adjustment is appropriate. The commissioner of finance from
33 time to time shall publish all rulings of general public interest with
34 respect to any application of the provisions of this subdivision.

35 10. Intentionally omitted.

36 11. Intentionally omitted.

37 12. Intentionally omitted.

38 13. (a) In addition to any other credit allowed by this section, a
39 taxpayer shall be allowed a credit against the tax imposed by this
40 subchapter to be credited or refunded without interest, in the manner
41 hereinafter provided in this section.

42 (1)(i) Where a taxpayer shall have relocated to the city from a
43 location outside the state, and by such relocation shall have created a
44 minimum of one hundred industrial or commercial employment opportu-
45 nities; and where such taxpayer shall have entered into a written lease
46 for the relocation premises, the terms of which lease provide for
47 increased additional payments to the landlord which are based solely and
48 directly upon any increase or addition in real estate taxes imposed on
49 the leased premises, the taxpayer upon approval and certification by the
50 industrial and commercial incentive board as hereinafter provided shall
51 be entitled to a credit against the tax imposed by this subchapter. The
52 amount of such credit shall be an amount equal to the annual increased
53 payments actually made by the taxpayer to the landlord which are solely
54 and directly attributable to an increase or addition to the real estate
55 tax imposed upon the leased premises. Such credit shall be allowed only

1 to the extent that the taxpayer has not otherwise claimed said amount as
2 a deduction against the tax imposed by this subchapter.

3 (ii) The industrial and commercial incentive board in approving and
4 certifying to the qualifications of the taxpayer to receive such tax
5 credit shall first determine that the applicant has met the requirements
6 of this section, and further, that the granting of the tax credit to the
7 applicant is in the "public interest". In determining that the granting
8 of the tax credit is in the public interest, the board shall make affir-
9 mative findings that: the granting of the tax credit to the applicant
10 will not effect an undue hardship on similar taxpayers already located
11 within the city; the existence of this tax incentive has been instru-
12 mental in bringing about the relocation of the applicant to the city;
13 and the granting of the tax credit will foster the economic recovery and
14 economic development of the city.

15 (iii) The tax credit, if approved and certified by the industrial and
16 commercial incentive board, must be utilized annually by the taxpayer
17 for the length of the term of the lease or for a period not to exceed
18 ten years from the date of relocation whichever period is shorter.

19 (2) When used in this subdivision:

20 (i) "Employment opportunity" means the creation of a full time posi-
21 tion of gainful employment for an industrial or commercial employee and
22 the actual hiring of such employee for the said position.

23 (ii) "Industrial employee" means one engaged in the manufacture or
24 assembling of tangible goods or the processing of raw materials.

25 (iii) "Commercial employee" means one engaged in the buying, selling
26 or otherwise providing of goods or services other than on a retail
27 basis.

28 (iv) "Retail" means the selling or otherwise disposing or furnishing
29 of tangible goods or services directly to the ultimate user or consumer.

30 (v) "Full time position" means the hiring of an industrial or commer-
31 cial employee in a position of gainful employment where the number of
32 hours worked by such employees is not less than thirty hours during any
33 given work week.

34 (vi) "Industrial and commercial incentive board" means the board
35 created pursuant to part three of subchapter two of chapter two of this
36 title.

37 (b) The credit allowed under this subdivision for any taxable year
38 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
39 ited or refunded, without interest, in accordance with the provisions of
40 section 11-677 of this chapter.

41 14. (a) In addition to any other credit allowed by this section, a
42 taxpayer shall be allowed a credit against the tax imposed by this
43 subchapter to be credited or refunded without interest, in the manner
44 hereinafter provided in this section. The amount of such credit shall
45 be:

46 (1) A maximum of three hundred dollars for each commercial employment
47 opportunity and a maximum of five hundred dollars for each industrial
48 employment opportunity relocated to the city from an area outside the
49 state. Such credit shall be allowed to a taxpayer who relocates a mini-
50 mum of ten employment opportunities. The credit shall be allowed against
51 employment opportunity relocation costs incurred by the taxpayer. Such
52 credit shall be allowed only to the extent that the taxpayer has not
53 claimed a deduction for allowable employment opportunity relocation
54 costs. The credit allowed hereunder may be taken by the taxpayer in
55 whole or in part in the year in which the employment opportunity is
56 relocated by such taxpayer or either of the two years succeeding such

1 event, provided, however, no credit shall be allowed under this subdivi-
2 sion to a taxpayer for industrial employment opportunities relocated to
3 premises (i) that are within an industrial business zone established
4 pursuant to section 22-626 of the code of the preceding municipality and
5 (ii) for which a binding contract to purchase or lease was first entered
6 into by the taxpayer on or after July first, two thousand five.

7 The commissioner of finance is empowered to promulgate rules and regu-
8 lations and to prescribe the form of application to be used by a taxpay-
9 er seeking the such credit.

10 (2) When used in this subdivision:

11 (i) "Employment opportunity" means the creation of a full time posi-
12 tion of gainful employment for an industrial or commercial employee and
13 the actual hiring of such employee for the said position.

14 (ii) "Industrial employee" means one engaged in the manufacture or
15 assembling of tangible goods or the processing of raw materials.

16 (iii) "Commercial employee" means one engaged in the buying, selling
17 or otherwise providing of goods or services other than on a retail
18 basis.

19 (iv) "Retail" means the selling or otherwise disposing of tangible
20 goods directly to the ultimate user or consumer.

21 (v) "Full time position" means the hiring of an industrial or commer-
22 cial employee in a position of gainful employment where the number of
23 hours worked by such employee is not less than thirty hours during any
24 given work week.

25 (vi) "Employment opportunity relocation costs" means the costs
26 incurred by the taxpayer in moving furniture, files, papers and office
27 equipment into the city from a location outside the state; the costs
28 incurred by the taxpayer in the moving and installation of machinery and
29 equipment into the city from a location outside the state; the costs of
30 installation of telephones and other communications equipment required
31 as a result of the relocation to the city from a location outside the
32 state; the cost incurred in the purchase of office furniture and
33 fixtures required as a result of the relocation to the city from a
34 location outside the state; and the cost of renovation of the premises
35 to be occupied as a result of the relocation; provided, however, that
36 such renovation costs shall be allowable only to the extent that they do
37 not exceed seventy-five cents per square foot of the total area utilized
38 by the taxpayer in the occupied premises.

39 (b) The credit allowed under this section for any taxable year shall
40 be deemed to be an overpayment of tax by the taxpayer to be credited or
41 refunded without interest in accordance with the provisions of section
42 11-677 of this chapter.

43 (c) Notwithstanding any other provision of this subdivision to the
44 contrary, in the case of a taxpayer that has received, in a taxable year
45 beginning before January first, two thousand fifteen, the credit set
46 forth in subdivision fourteen of section 11-604 of this chapter for an
47 eligible employment relocation, a credit shall be allowed to the taxpay-
48 er under this subdivision for any tax year beginning on or after January
49 first, two thousand fifteen, in the same amount and to the same extent
50 that a credit, or the unused portion thereof, would have been allowed
51 under subdivision fourteen of section 11-604 of this chapter, as in
52 effect on December thirty-first, two thousand fourteen, if such subdivi-
53 sion continued to apply to the taxpayer for such taxable year.

54 15. Intentionally omitted.

55 16. Intentionally omitted.

1 17. (a) In addition to any other credit allowed by this section, a
2 taxpayer that has obtained the certifications required by chapter six-B
3 of title twenty-two of the code of the preceding municipality shall be
4 allowed a credit against the tax imposed by this subchapter. The amount
5 of the credit shall be the amount determined by multiplying five hundred
6 dollars or, in the case of a taxpayer that has obtained pursuant to
7 chapter six-B of such title twenty-two a certification of eligibility
8 dated on or after July first, nineteen hundred ninety-five, one thousand
9 dollars or, in the case of an eligible business that has obtained pursu-
10 ant to chapter six-B of such title twenty-two a certification of eligi-
11 bility dated on or after July first, two thousand, for a relocation to
12 eligible premises located within a revitalization area defined in subdivi-
13 sion (n) of section 22-621 of the code of the preceding municipality,
14 three thousand dollars, by the number of eligible aggregate employment
15 shares maintained by the taxpayer during the taxable year with respect
16 to particular premises to which the taxpayer has relocated; provided,
17 however, with respect to a relocation for which no application for a
18 certificate of eligibility is submitted prior to July first, two thou-
19 sand three, to eligible premises that are not within a revitalization
20 area, if the date of such relocation as determined pursuant to subdivi-
21 sion (j) of section 22-621 of the code of the preceding municipality is
22 before July first, nineteen hundred ninety-five, the amount to be multi-
23 plied by the number of eligible aggregate employment shares shall be
24 five hundred dollars, and with respect to a relocation for which no
25 application for a certificate of eligibility is submitted prior to July
26 first, two thousand three, to eligible premises that are within a revi-
27 talization area, if the date of such relocation as determined pursuant
28 to subdivision (j) of such section is before July first, nineteen
29 hundred ninety-five, the amount to be multiplied by the number of eligi-
30 ble aggregate employment shares shall be five hundred dollars, and if
31 the date of such relocation as determined pursuant to subdivision (j) of
32 such section is on or after July first, nineteen hundred ninety-five,
33 and before July first, two thousand, one thousand dollars; provided,
34 however, that no credit shall be allowed for the relocation of any
35 retail activity or hotel services; provided, further, that no credit
36 shall be allowed under this subdivision to any taxpayer that has elected
37 pursuant to subdivision (d) of section 22-622 of the code of the preced-
38 ing municipality to take such credit against a gross receipts tax
39 imposed by chapter eleven of this title; and provided that in the case
40 of an eligible business that has obtained pursuant to chapter six-B of
41 such title twenty-two certifications of eligibility for more than one
42 relocation, the portion of the total amount of eligible aggregate
43 employment shares to be multiplied by the dollar amount specified in
44 this subdivision for each such certification of a relocation shall be
45 the number of total attributed eligible aggregate employment shares
46 determined with respect to such relocation pursuant to subdivision (o)
47 of section 22-621 of the code of the preceding municipality. For
48 purposes of this subdivision, the terms "eligible aggregate employment
49 shares," "relocate," "retail activity" and "hotel services" shall have
50 the meanings ascribed by section 22-621 of the code of the preceding
51 municipality.

52 (b) The credit allowed under this subdivision with respect to eligible
53 aggregate employment shares maintained with respect to particular prem-
54 ises to which the taxpayer has relocated shall be allowed for the first
55 taxable year during which such eligible aggregate employment shares are
56 maintained with respect to such premises and for any of the twelve

1 succeeding taxable years during which eligible aggregate employment
2 shares are maintained with respect to such premises; provided that the
3 credit allowed for the twelfth succeeding taxable year shall be calcu-
4 lated by multiplying the number of eligible aggregate employment shares
5 maintained with respect to such premises in the twelfth succeeding taxa-
6 ble year by the lesser of one and a fraction the numerator of which is
7 such number of days in the taxable year of relocation less the number of
8 days the eligible business maintained employment shares in the eligible
9 premises in the taxable year of relocation and the denominator of which
10 is the number of days in such twelfth succeeding taxable year during
11 which such eligible aggregate employment shares are maintained with
12 respect to such premises. Except as provided in paragraph (d) of this
13 subdivision, if the amount of the credit allowable under this subdivi-
14 sion for any taxable year exceeds the tax imposed for such year, the
15 excess may be carried over, in order, to the five immediately succeeding
16 taxable years and, to the extent not previously deductible, may be
17 deducted from the taxpayer's tax for such years.

18 (c) The credit allowable under this subdivision shall be deducted
19 after the credit allowed by subdivision eighteen of this section, but
20 prior to the deduction of any other credit allowed by this section.

21 (d) In the case of a taxpayer that has obtained a certification of
22 eligibility pursuant to chapter six-B of title twenty-two of the code of
23 the preceding municipality dated on or after July first, two thousand
24 for a relocation to eligible premises located within the revitalization
25 area defined in subdivision (n) of section 22-621 of the code of the
26 preceding municipality, the credits allowed under this subdivision, or
27 in the case of a taxpayer that has relocated more than once, the portion
28 of such credits attributed to such certification of eligibility pursuant
29 to paragraph (a) of this subdivision, against the tax imposed by this
30 chapter for the taxable year of such relocation and for the four taxable
31 years immediately succeeding the taxable year of such relocation, shall
32 be deemed to be overpayments of tax by the taxpayer to be credited or
33 refunded, without interest, in accordance with the provisions of section
34 11-677 of this chapter. For such taxable years, such credits or portions
35 thereof may not be carried over to any succeeding taxable year;
36 provided, however, that this paragraph shall not apply to any relocation
37 for which an application for a certification of eligibility was not
38 submitted prior to July first, two thousand three, unless the date of
39 such relocation is on or after July first, two thousand.

40 (e) Notwithstanding any other provision of this subdivision to the
41 contrary, in the case of a taxpayer that has obtained, pursuant to chap-
42 ter six-B of title twenty-two of the code of the preceding municipality,
43 a certification of eligibility and has received, in a taxable year
44 beginning before January first, two thousand fifteen, the credit set
45 forth in subdivision seventeen of section 11-604 of this chapter or
46 section 11-643.7 of this chapter for the relocation of an eligible busi-
47 ness, a credit shall be allowed under this subdivision to the taxpayer
48 for any taxable year beginning on or after January first, two thousand
49 fifteen in the same amount and to the same extent that a credit would
50 have been allowed under subdivision seventeen of section 11-604 of this
51 chapter or section 11-643.7 of this chapter, as in effect on December
52 thirty-first, two thousand fourteen, if such subdivision continued to
53 apply to the taxpayer for such taxable year.

54 17-a. Intentionally omitted.

55 17-b. (a) In addition to any other credit allowed by this section, an
56 eligible business that first enters into a binding contract on or after

1 July first, two thousand five to purchase or lease eligible premises to
2 which it relocates shall be allowed a one-time credit against the tax
3 imposed by this subchapter to be credited or refunded in the manner
4 hereinafter provided in this subdivision. The amount of such credit
5 shall be one thousand dollars per full-time employee; provided, however,
6 that the amount of such credit shall not exceed the lesser of actual
7 relocation costs or one hundred thousand dollars.

8 (b) When used in this subdivision, the following terms shall have the
9 following meanings:

10 (1) "Eligible business" means any business subject to tax under this
11 subchapter that (i) has been conducting substantial business operations
12 and engaging primarily in industrial and manufacturing activities at one
13 or more locations within the city of New York or outside the state of
14 New York continuously during the twenty-four consecutive full months
15 immediately preceding relocation, (ii) has leased the premises from
16 which it relocates continuously during the twenty-four consecutive full
17 months immediately preceding relocation, (iii) first enters into a bind-
18 ing contract on or after July first, two thousand five to purchase or
19 lease eligible premises to which such business will relocate, and (iv)
20 will be engaged primarily in industrial and manufacturing activities at
21 such eligible premises.

22 (2) "Eligible premises" means premises located entirely within an
23 industrial business zone. For any eligible business, an industrial busi-
24 ness zone tax credit shall not be granted with respect to more than one
25 eligible premises.

26 (3) "Full-time employee" means (i) one person gainfully employed in an
27 eligible premises by an eligible business where the number of hours
28 required to be worked by such person is not less than thirty-five hours
29 per week; or (ii) two persons gainfully employed in an eligible premises
30 by an eligible business where the number of hours required to be worked
31 by each such person is more than fifteen hours per week but less than
32 thirty-five hours per week.

33 (4) "Industrial business zone" means an area within the city of New
34 York established pursuant to section 22-626 of the code of the preceding
35 municipality.

36 (5) "Industrial business zone tax credit" means a credit, as provided
37 for in this subdivision, against a tax imposed under this subchapter.

38 (6) "Industrial and manufacturing activities" means activities involv-
39 ing the assembly of goods to create a different article, or the process-
40 ing, fabrication, or packaging of goods. Industrial and manufacturing
41 activities shall not include waste management or utility services.

42 (7) "Relocation" means the physical relocation of furniture, fixtures,
43 equipment, machinery and supplies directly to an eligible premises, from
44 one or more locations of an eligible business, including at least one
45 location at which such business conducts substantial business operations
46 and engages primarily in industrial and manufacturing activities. For
47 purposes of this subdivision, the date of relocation shall be (i) the
48 date of the completion of the relocation to the eligible premises or
49 (ii) ninety days from the commencement of the relocation to the eligible
50 premises, whichever is earlier.

51 (8) "Relocation costs" means costs incurred in the relocation of such
52 furniture, fixtures, equipment, machinery and supplies, including, but
53 not limited to, the cost of dismantling and reassembling equipment and
54 the cost of floor preparation necessary for the reassembly of the equip-
55 ment. Relocation costs shall include only such costs that are incurred
56 during the ninety-day period immediately following the commencement of

1 the relocation to an eligible premises. Relocation costs shall not
2 include costs for structural or capital improvements or items purchased
3 in connection with the relocation.

4 (c) The credit allowed under this subdivision for any taxable year
5 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
6 ited or refunded without interest, in accordance with the provisions of
7 section 11-677 of this chapter.

8 (d) The number of full-time employees for the purposes of calculating
9 an industrial business tax credit shall be the average number of full-
10 time employees, calculated on a weekly basis, employed in the eligible
11 premises by the eligible business in the fifty-two week period imme-
12 diately following the earlier of (1) the date of the completion of the
13 relocation to eligible premises or (2) ninety days from the commencement
14 of the relocation to the eligible premises.

15 (e) The credit allowed under this subdivision must be taken by the
16 taxpayer in the taxable year in which such twelve month period selected
17 by the taxpayer ends.

18 (f) For the purposes of calculating entire net income in the taxable
19 year that an industrial business tax credit is allowed, a taxpayer must
20 add back the amount of the credit allowed under this subdivision, to the
21 extent of any relocation costs deducted in the current taxable year or a
22 prior taxable year in calculating federal taxable income.

23 (g) The credit allowed under this subdivision shall not be granted for
24 an eligible business for more than one relocation, provided, however, an
25 industrial business tax credit shall not be granted if the eligible
26 business receives benefits pursuant to chapter six-B or six-C of title
27 twenty-two of the code of the preceding municipality, through a grant
28 program administered by the business relocation assistance corporation,
29 or through the New York city printers relocation fund grant.

30 (h) The commissioner of finance is authorized to promulgate rules and
31 regulations and to prescribe forms necessary to effectuate the purposes
32 of this subdivision.

33 18. (a) If a corporation is a partner in an unincorporated business
34 taxable under chapter five of this title, and is required to include in
35 entire net income its distributive share of income, gain, loss and
36 deductions of, or guaranteed payments from, such unincorporated busi-
37 ness, such corporation shall be allowed a credit against the tax imposed
38 by this subchapter equal to the lesser of the amounts determined in
39 subparagraphs one and two of this paragraph:

40 (1) The amount determined in this subparagraph is the product of (i)
41 the sum of (A) the tax imposed by chapter five of this title on the
42 unincorporated business for its taxable year ending within or with the
43 taxable year of the corporation and paid by the unincorporated business
44 and (B) the amount of any credit or credits taken by the unincorporated
45 business under section 11-503 of this title, except the credit allowed
46 by subdivision (b) of section 11-503 of this title, for its taxable year
47 ending within or with the taxable year of the corporation, to the extent
48 that such credits do not reduce such unincorporated business's tax below
49 zero, and (ii) a fraction, the numerator of which is the net total of
50 the corporation's distributive share of income, gain, loss and
51 deductions of, and guaranteed payments from, the unincorporated business
52 for such taxable year, and the denominator of which is the sum, for such
53 taxable year, of the net total distributive shares of income, gain, loss
54 and deductions of, and guaranteed payments to, all partners in the unin-
55 corporated business for whom or which such net total, as separately
56 determined for each partner, is greater than zero.

1 (2) The amount determined in this subparagraph is the product of (i)
2 the excess of (A) the tax computed under clause (i) of subparagraph one
3 of paragraph (e) of subdivision one of this section, without allowance
4 of any credits allowed by this section, over (B) the tax so computed,
5 determined as if the corporation had no such distributive share or guar-
6 anteed payments with respect to the unincorporated business, and (ii) a
7 fraction, the numerator of which is four and the denominator of which is
8 eight and eighty-five one-hundredths, except that in the case of a
9 financial corporation as defined in clause (i) of subparagraph one of
10 paragraph (e) of subdivision one of this section, such denominator is
11 nine, and in the case of a taxpayer that is subject to paragraph (j) or
12 (k) of subdivision one of this section, such denominator shall be the
13 rate of tax as determined by such paragraph (j) or (k) for the taxable
14 year; provided that the amounts computed in subclauses (A) and (B) of
15 clause (i) of this subparagraph shall be computed with the following
16 modifications:

17 (A) such amounts shall be computed without taking into account any
18 carryforward or carryback by the partner of a net operating loss or a
19 prior net operation loss conversion subtraction;

20 (B) if, prior to taking into account any distributive share or guaran-
21 teed payments from any unincorporated business or any net operating loss
22 carryforward or carryback, the entire net income of the partner is less
23 than zero, such entire net income shall be treated as zero; and

24 (C) if such partner's net total distributive share of income, gain,
25 loss and deductions of, and guaranteed payments from, any unincorporated
26 business is less than zero, such net total shall be treated as zero. The
27 amount determined in this subparagraph shall not be less than zero.

28 (b) (1) Notwithstanding anything to the contrary in paragraph (a) of
29 this subdivision, in the case of a corporation that, before the applica-
30 tion of this subdivision or any other credit allowed by this section, is
31 liable for the tax on business income under clause (i) of subparagraph
32 one of paragraph (e) of subdivision one of this section, the credit or
33 the sum of the credits that may be taken by such corporation for a taxa-
34 ble year under this subdivision with respect to an unincorporated busi-
35 ness or unincorporated businesses in which it is a partner shall not
36 exceed the tax so computed, without allowance of any credits allowed by
37 this section, multiplied by a fraction the numerator of which is four
38 and the denominator of which is eight and eighty-five one-hundredths,
39 except that in the case of a financial corporation as defined in clause
40 (i) of subparagraph one of paragraph (e) of subdivision one of this
41 section, such denominator is nine, and in the case of a taxpayer that is
42 subject to paragraph (j) or (k) of subdivision one of this section, such
43 denominator shall be the rate of tax as determined by such paragraph (j)
44 or (k) for the taxable year. If the credit allowed under this subdivi-
45 sion or the sum of such credits exceeds the product of such tax and such
46 fraction, the amount of the excess may be carried forward, in order, to
47 each of the seven immediately succeeding taxable years and, to the
48 extent not previously taken, shall be allowed as a credit in each of
49 such years. In applying such provisions, the credit determined for the
50 taxable year under paragraph (a) of this subdivision shall be taken
51 before taking any credit carryforward pursuant to this paragraph and the
52 credit carryforward attributable to the earliest taxable year shall be
53 taken before taking a credit carryforward attributable to a subsequent
54 taxable year.

55 (2) Intentionally omitted.

1 (2-a) Notwithstanding any other provision of this subdivision to the
2 contrary, in the case of a taxpayer that has received, in a taxable year
3 beginning before January first, two thousand fifteen, the credit set
4 forth in subdivision eighteen of section 11-604 of this chapter or in
5 section 11-643.8 of this chapter for a tax paid under chapter five of
6 this title in a taxable year beginning before January first, two thou-
7 sand fifteen, the taxpayer may carry forward the unused portion of such
8 credit under this subdivision to any taxable year beginning on or after
9 January first, two thousand fifteen in the same amount and to the same
10 extent, including the same limitations, that the credit, or the unused
11 portion thereof, would have been allowed to be carried forward under
12 subparagraph one of paragraph (b) of subdivision eighteen of section
13 11-604 of this chapter or paragraph one of subdivision (b) of section
14 11-643.8 of this chapter, as in effect on December thirty-first, two
15 thousand fourteen, if such subdivision continued to apply to the taxpay-
16 er for such taxable year.

17 (3) No credit allowed under this subdivision may be taken in a taxable
18 year by a taxpayer that, in the absence of such credit, would be liable
19 for the tax computed on the basis of business capital under clause (ii)
20 of subparagraph one of paragraph (e) of subdivision one of this section
21 or the fixed-dollar minimum tax under clause (iv) of subparagraph one of
22 paragraph (e) of subdivision one of this section.

23 (c) For corporations that file a report on a combined basis pursuant
24 to section 11-654.3 of this subchapter, the credit allowed by this
25 subdivision shall be computed as if the combined group were the partner
26 in each unincorporated business from which any of the members of such
27 group had a distributive share or guaranteed payments, provided, howev-
28 er, if more than one member of the combined group is a partner in the
29 same unincorporated business, for purposes of the calculation required
30 in subparagraph one of paragraph (a) of this subdivision, the numerator
31 of the fraction described in clause (ii) of such subparagraph one shall
32 be the sum of the net total distributive shares of income, gain, loss
33 and deductions of, and guaranteed payments from, the unincorporated
34 business of all of the partners of the unincorporated business within
35 the combined group for which such net total, as separately determined
36 for each partner, is greater than zero, and the denominator of such
37 fraction shall be the sum of the net total distributive shares of
38 income, gain, loss and deductions of, and guaranteed payments from, the
39 unincorporated business of all partners in the unincorporated business
40 for whom or which such net total, as separately determined for each
41 partner, is greater than zero.

42 (d) Notwithstanding any other provision of this subchapter, the credit
43 allowable under this subdivision shall be taken prior to the taking of
44 any other credit allowed by this section. Notwithstanding any other
45 provision of this subchapter, the application of this subdivision shall
46 not change the basis on which the taxpayer's tax is computed under para-
47 graph (e) of subdivision one of this section.

48 19. Lower Manhattan relocation and employment assistance credit. (a)
49 In addition to any other credit allowed by this section, a taxpayer that
50 has obtained the certifications required by chapter six-C of title twen-
51 ty-two of the code of the preceding municipality shall be allowed a
52 credit against the tax imposed by this subchapter. The amount of the
53 credit shall be the amount determined by multiplying three thousand
54 dollars by the number of eligible aggregate employment shares maintained
55 by the taxpayer during the taxable year with respect to eligible prem-
56 ises to which the taxpayer has relocated; provided, however, that no

1 credit shall be allowed for the relocation of any retail activity or
2 hotel services; provided, further, that no credit shall be allowed under
3 this subdivision to any taxpayer that has elected pursuant to subdivi-
4 sion (d) of section 22-624 of the code of the preceding municipality to
5 take such credit against a gross receipts tax imposed under chapter
6 eleven of this title. For purposes of this subdivision, the terms
7 "eligible aggregate employment shares," "eligible premises," "relocate,"
8 "retail activity" and "hotel services" shall have the meanings ascribed
9 by section 22-623 of the code of the preceding municipality.

10 (b) The credit allowed under this subdivision with respect to eligible
11 aggregate employment shares maintained with respect to eligible premises
12 to which the taxpayer has relocated shall be allowed for the taxable
13 year of the relocation and for any of the twelve succeeding taxable
14 years during which eligible aggregate employment shares are maintained
15 with respect to eligible premises; provided that the credit allowed for
16 the twelfth succeeding taxable year shall be calculated by multiplying
17 the number of eligible aggregate employment shares maintained with
18 respect to eligible premises in the twelfth succeeding taxable year by
19 the lesser of one and a fraction the numerator of which is such number
20 of days in the taxable year of relocation less the number of days the
21 taxpayer maintained employment shares in eligible premises in the taxa-
22 ble year of relocation and the denominator of which is the number of
23 days in such twelfth taxable year during which such eligible aggregate
24 employment shares are maintained with respect to such premises.

25 (c) Except as provided in paragraph (d) of this subdivision, if the
26 amount of the credit allowable under this subdivision for any taxable
27 year exceeds the tax imposed for such year, the excess may be carried
28 over, in order, to the five immediately succeeding taxable years and, to
29 the extent not previously deductible, may be deducted from the taxpay-
30 er's tax for such years.

31 (d) The credits allowed under this subdivision, against the tax
32 imposed by this chapter for the taxable year of the relocation and for
33 the four taxable years immediately succeeding the taxable year of such
34 relocation, shall be deemed to be overpayments of tax by the taxpayer to
35 be credited or refunded, without interest, in accordance with the
36 provisions of section 11-677 of this chapter. For such taxable years,
37 such credits or portions thereof may not be carried over to any succeed-
38 ing taxable year.

39 (e) The credit allowable under this subdivision shall be deducted
40 after the credits allowed by subdivisions seventeen and eighteen of this
41 section, but prior to the deduction of any other credit allowed by this
42 section.

43 (f) Notwithstanding any other provision of this subdivision to the
44 contrary, in the case of a taxpayer that has obtained, pursuant to chap-
45 ter six-C of title twenty-two of the code of the preceding municipality,
46 a certification of eligibility and has received, in a taxable year
47 beginning before January first, two thousand fifteen, the credit set
48 forth in subdivision nineteen of section 11-604 of this chapter or
49 section 11-643.9 of this chapter for the relocation of an eligible busi-
50 ness, a credit shall be allowed under this subdivision to the taxpayer
51 for any taxable year beginning on or after January first, two thousand
52 fifteen in the same amount and to the same extent that a credit would
53 have been allowed under subdivision nineteen of section 11-604 of this
54 chapter or section 11-643.9 of this chapter, as in effect on December
55 thirty-first, two thousand fourteen, if such subdivision continued to
56 apply to the taxpayer for such taxable year.

1 20. Intentionally omitted.

2 21. Biotechnology credit. (a) (1) A taxpayer that is a qualified
3 emerging technology company, engages in biotechnologies, and meets the
4 eligibility requirements of this subdivision, shall be allowed a credit
5 against the tax imposed by this subchapter. The amount of credit shall
6 be equal to the sum of the amounts specified in subparagraphs three,
7 four and five of this paragraph, subject to the limitations in subpara-
8 graphs six and seven of this paragraph, paragraph (b) of this subdivi-
9 sion, and paragraph three of subdivision (d) of section twelve hundred
10 one-a of the tax law. For the purposes of this subdivision, "qualified
11 emerging technology company" shall mean a company located in the city:
12 (i) whose primary products or services are classified as emerging tech-
13 nologies and whose total annual product sales are ten million dollars or
14 less; or

15 (ii) a company that has research and development activities in the
16 city and whose ratio of research and development funds to net sales
17 equals or exceeds the average ratio for all surveyed companies classi-
18 fied as determined by the National Science Foundation in the most recent
19 published results from its Survey of Industry Research and Development,
20 or any comparable successor survey as determined by the department of
21 finance, and whose total annual product sales are ten million dollars or
22 less. For the purposes of this subdivision, the definition of research
23 and development funds shall be the same as that used by the National
24 Science Foundation in the aforementioned survey. For the purposes of
25 this subdivision, "biotechnologies" shall mean the technologies involv-
26 ing the scientific manipulation of living organisms, especially at the
27 molecular and/or the sub-molecular genetic level, to produce products
28 conducive to improving the lives and health of plants, animals, and
29 humans; and the associated scientific research, pharmacological, mechan-
30 ical, and computational applications and services connected with these
31 improvements. Activities included with such applications and services
32 shall include, but not be limited to, alternative mRNA splicing, DNA
33 sequence amplification, antigenetic switching bioaugmentation, bioen-
34 richment, bioremediation, chromosome walking, cytogenetic engineering,
35 DNA diagnosis, fingerprinting, and sequencing, electroporation, gene
36 translocation, genetic mapping, site-directed mutagenesis, bio-transduc-
37 tion, bio-mechanical and bio-electrical engineering, and bio-informat-
38 ics.

39 (2) An eligible taxpayer shall (i) have no more than one hundred full-
40 time employees, of which at least seventy-five percent are employed in
41 the city, (ii) have a ratio of research and development funds to net
42 sales, as referred to in section thirty-one hundred two-e of the public
43 authorities law, which equals or exceeds six percent during the calendar
44 year ending with or within the taxable year for which the credit is
45 claimed, and (iii) have gross revenues, along with the gross revenues of
46 its "affiliates" and "related members" not exceeding twenty million
47 dollars for the calendar year immediately preceding the calendar year
48 ending with or within the taxable year for which the credit is claimed.
49 For the purposes of this subdivision, "affiliates" shall mean those
50 corporations that are members of the same affiliated group, as defined
51 in section fifteen hundred four of the internal revenue code, as the
52 taxpayer. For the purposes of this subdivision, the term "related
53 members" shall mean a person, corporation, or other entity, including an
54 entity that is treated as a partnership or other pass-through vehicle
55 for purposes of federal taxation, whether such person, corporation or
56 entity is a taxpayer or not, where one such person, corporation or enti-

1 ty, or set of related persons, corporations or entities, directly or
2 indirectly owns or controls a controlling interest in another entity.
3 Such entity or entities may include all taxpayers under chapters five,
4 eleven and seventeen of this title, and this subchapter and subchapters
5 two and three of this chapter. A controlling interest shall mean, in the
6 case of a corporation, either thirty percent or more of the total
7 combined voting power of all classes of stock of such corporation, or
8 thirty percent or more of the capital, profits or beneficial interest in
9 such voting stock of such corporation; and in the case of a partnership,
10 association, trust or other entity, thirty percent or more of the capi-
11 tal, profits or beneficial interest in such partnership, association,
12 trust or other entity.

13 (3) An eligible taxpayer shall be allowed a credit for eighteen per
14 centum of the cost or other basis for federal income tax purposes of
15 research and development property that is acquired by the taxpayer by
16 purchase as defined in subsection (d) of section one hundred seventy-
17 nine of the internal revenue code and placed in service during the
18 calendar year that ends with or within the taxable year for which the
19 credit is claimed. Provided, however, for the purposes of this paragraph
20 only, an eligible taxpayer shall be allowed a credit for such percentage
21 of the (i) cost or other basis for federal income tax purposes for prop-
22 erty used in the testing or inspection of materials and products, (ii)
23 the costs or expenses associated with quality control of the research
24 and development, (iii) fees for use of sophisticated technology facili-
25 ties and processes, and (iv) fees for the production or eventual commer-
26 cial distribution of materials and products resulting from the activ-
27 ities of an eligible taxpayer as long as such activities fall under
28 activities relating to biotechnologies. The costs, expenses and other
29 amounts for which a credit is allowed and claimed under this paragraph
30 shall not be used in the calculation of any other credit allowed under
31 this subchapter. For the purposes of this subdivision, "research and
32 development property" shall mean property that is used for purposes of
33 research and development in the experimental or laboratory sense. Such
34 purposes shall not be deemed to include the ordinary testing or
35 inspection of materials or products for quality control, efficiency or
36 surveys, management studies, consumer surveys, advertising, promotions,
37 or research in connection with literary, historical or similar projects.

38 (4) An eligible taxpayer shall be allowed a credit for nine per centum
39 of qualified research expenses paid or incurred by the taxpayer in the
40 calendar year that ends with or within the taxable year for which the
41 credit is claimed. For the purposes of this subdivision, "qualified
42 research expenses" shall mean expenses associated with in-house research
43 and processes, and costs associated with the dissemination of the
44 results of the products that directly result from such research and
45 development activities; provided, however, that such costs shall not
46 include advertising or promotion through media. In addition, costs asso-
47 ciated with the preparation of patent applications, patent application
48 filing fees, patent research fees, patent examinations fees, patent post
49 allowance fees, patent maintenance fees, and grant application expenses
50 and fees shall qualify as qualified research expenses. In no case shall
51 the credit allowed under this subparagraph apply to expenses for liti-
52 gation or the challenge of another entity's intellectual property
53 rights, or for contract expenses involving outside paid consultants.

54 (5) An eligible taxpayer shall be allowed a credit for qualified high-
55 technology training expenditures as described in this subparagraph paid

1 or incurred by the taxpayer during the calendar year that ends with or
2 within the taxable year for which the credit is claimed.

3 (i) The amount of credit shall be one hundred percent of the training
4 expenses described in clause (iii) of this subparagraph, subject to a
5 limitation of no more than four thousand dollars per employee per calen-
6 dar year for such training expenses.

7 (ii) Qualified high-technology training shall include a course or
8 courses taken and satisfactorily completed by an employee of the taxpay-
9 er at an accredited, degree granting post-secondary college or universi-
10 ty in the city that (A) directly relates to biotechnology activities,
11 and (B) is intended to upgrade, retrain or improve the productivity or
12 theoretical awareness of the employee. Such course or courses may
13 include, but are not limited to, instruction or research relating to
14 techniques, meta, macro, or micro-theoretical or practical knowledge
15 bases or frontiers, or ethical concerns related to such activities. Such
16 course or courses shall not include classes in the disciplines of
17 management, accounting or the law or any class designed to fulfill the
18 discipline specific requirements of a degree program at the associate,
19 baccalaureate, graduate or professional level of these disciplines.
20 Satisfactory completion of a course or courses shall mean the earning
21 and granting of credit or equivalent unit, with the attainment of a
22 grade of "B" or higher in a graduate level course or courses, a grade of
23 "C" or higher in an undergraduate level course or courses, or a similar
24 measure of competency for a course that is not measured according to a
25 standard grade formula.

26 (iii) Qualified high-technology training expenditures shall include
27 expenses for tuition and mandatory fees, software required by the insti-
28 tution, fees for textbooks or other literature required by the institu-
29 tion offering the course or courses, minus applicable scholarships and
30 tuition or fee waivers not granted by the taxpayer or any affiliates of
31 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified
32 high-technology expenditures do not include room and board, computer
33 hardware or software not specifically assigned for such course or cours-
34 es, late-charges, fines or membership dues and similar expenses. Such
35 qualified expenditures shall not be eligible for the credit provided by
36 this section unless the employee for whom the expenditures are disbursed
37 is continuously employed by the taxpayer in a full-time, full-year posi-
38 tion primarily located at a qualified site during the period of such
39 coursework and lasting through at least one hundred eighty days after
40 the satisfactory completion of the qualifying course-work. Qualified
41 high-technology training expenditures shall not include expenses for
42 in-house or shared training outside of a city higher education institu-
43 tion or the use of consultants outside of credit granting courses,
44 whether such consultants function inside of such higher education insti-
45 tution or not.

46 (iv) If a taxpayer relocates from an academic business incubator
47 facility partnered with an accredited post-secondary education institu-
48 tion located within the city, which provides space and business support
49 services to taxpayers, to another site, the credit provided in this
50 subdivision shall be allowed for all expenditures referenced in clause
51 (iii) of this subparagraph paid or incurred in the two preceding calen-
52 dar years that the taxpayer was located in such an incubator facility
53 for employees of the taxpayer who also relocate from said incubator
54 facility to such city site and are employed and primarily located by the
55 taxpayer in the city. Such expenditures in the two preceding years shall
56 be added to the amounts otherwise qualifying for the credit provided by

1 this subdivision that were paid or incurred in the calendar year that
2 the taxpayer relocates from such a facility. Such expenditures shall
3 include expenses paid for an eligible employee who is a full-time, full-
4 year employee of said taxpayer during the calendar year that the taxpay-
5 er relocated from an incubator facility notwithstanding (A) that such
6 employee was employed full or part-time as an officer, staff-person or
7 paid intern of the taxpayer when such taxpayer was located at such incu-
8 bator facility or (B) that such employee was not continuously employed
9 when such taxpayer was located at the incubator facility during the one
10 hundred eighty day period referred to in clause (iii) of this subpara-
11 graph, provided such employee received wages or equivalent income for at
12 least seven hundred fifty hours during any twenty-four month period when
13 the taxpayer was located at the incubator facility. Such expenditures
14 shall include payments made to such employee after the taxpayer has
15 relocated from the incubator facility for qualified expenditures if such
16 payments are made to reimburse an employee for expenditures paid by the
17 employee during such two preceding years. The credit provided under
18 this paragraph shall be allowed in any taxable year that the taxpayer
19 qualifies as an eligible taxpayer.

20 (v) For purposes of this subdivision the term "academic year" shall
21 mean the annual period of sessions of a post-secondary college or
22 university.

23 (vi) For the purposes of this subdivision the term "academic incubator
24 facility" shall mean a facility providing low-cost space, technical
25 assistance, support services and educational opportunities, including
26 but not limited to central services provided by the manager of the
27 facility to the tenants of the facility, to an entity located in the
28 city. Such entity's primary activity must be in biotechnologies, and
29 such entity must be in the formative stage of development. The academic
30 incubator facility and the entity must act in partnership with an
31 accredited post-secondary college or university located in the city. An
32 academic incubator facility's mission shall be to promote job creation,
33 entrepreneurship, technology transfer, and provide support services to
34 incubator tenants, including, but not limited to, business planning,
35 management assistance, financial-packaging, linkages to financing
36 services, and coordinating with other sources of assistance.

37 (6) An eligible taxpayer may claim credits under this subdivision for
38 three consecutive years. In no case shall the credit allowed by this
39 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
40 calendar year for eligible expenditures made during such calendar year.

41 (7) The credit allowed under this subdivision for any taxable year
42 shall not reduce the tax due for such year to less than the amount
43 prescribed in clause (iv) of subparagraph one of paragraph (e) of subdi-
44 vision one of this section. Provided, however, if the amount of credit
45 allowed under this subdivision for any taxable year reduces the tax to
46 such amount, any amount of credit not deductible in such taxable year
47 shall be treated as an overpayment of tax to be credited or refunded in
48 accordance with the provisions of section 11-677 of this chapter;
49 provided, however, that notwithstanding the provisions of section 11-679
50 of this chapter, no interest shall be paid thereon.

51 (8) The credit allowed under this subdivision shall only be allowed
52 for taxable years beginning before January first, two thousand nineteen.

53 (b) (1) The percentage of the credit allowed to a taxpayer under this
54 subdivision in any calendar year shall be:

55 (i) If the average number of individuals employed full time by a
56 taxpayer in the city during the calendar year that ends with or within

1 the taxable year for which the credit is claimed is at least one hundred
2 five percent of the taxpayer's base year employment, one hundred
3 percent, except that in no case shall the credit allowed under this
4 clause exceed two hundred fifty thousand dollars per calendar year.
5 Provided, however, the increase in base year employment shall not apply
6 to a taxpayer allowed a credit under this subdivision that was, (A)
7 located outside of the city, (B) not doing business, or (C) did not have
8 any employees, in the year preceding the first year that the credit is
9 claimed. Any such taxpayer shall be eligible for one hundred percent of
10 the credit for the first calendar year that ends with or within the
11 taxable year for which the credit is claimed, provided that such taxpay-
12 er locates in the city, begins doing business in the city or hires
13 employees in the city during such calendar year and is otherwise eligi-
14 ble for the credit pursuant to the provisions of this subdivision.

15 (ii) If the average number of individuals employed full time by a
16 taxpayer in the city during the calendar year that ends with or within
17 the taxable year for which the credit is claimed is less than one
18 hundred five percent of the taxpayer's base year employment, fifty
19 percent, except that in no case shall the credit allowed under this
20 clause exceed one hundred twenty-five thousand dollars per calendar
21 year. In the case of an entity located in the city receiving space and
22 business support services by an academic incubator facility, if the
23 average number of individuals employed full time by such entity in the
24 city during the calendar year in which the credit allowed under this
25 subdivision is claimed is less than one hundred five percent of the
26 taxpayer's base year employment, the credit shall be zero.

27 (2) For the purposes of this subdivision, "base year employment" means
28 the average number of individuals employed full-time by the taxpayer in
29 the city in the year preceding the first calendar year that ends with or
30 within the taxable year for which the credit is claimed.

31 (3) For the purposes of this subdivision, average number of individ-
32 uals employed full-time shall be computed by adding the number of such
33 individuals employed by the taxpayer at the end of each quarter during
34 each calendar year or other applicable period and dividing the sum so
35 obtained by the number of such quarters occurring within such calendar
36 year or other applicable period.

37 (4) Notwithstanding anything contained in this section to the contra-
38 ry, the credit provided by this subdivision shall be allowed against the
39 taxes authorized by this chapter for the taxable year after reduction by
40 all other credits permitted by this chapter.

41 (c) Notwithstanding any other provision of this subdivision to the
42 contrary, in the case of a taxpayer that has received, in a taxable year
43 beginning before January first, two thousand fifteen, the credit set
44 forth in subdivision twenty-one of section 11-604 of this chapter for an
45 eligible acquisition of property and/or expense paid or incurred, a
46 credit shall be allowed to the taxpayer under this subdivision for any
47 tax year beginning on or after January first, two thousand fifteen in
48 the same amount and to the same extent that a credit would have been
49 allowed under subdivision twenty-one of section 11-604 of this chapter,
50 as in effect on December thirty-first, two thousand fourteen, if such
51 subdivision continued to apply to the taxpayer for such taxable year.

52 22. Beer production credit. (a) A taxpayer subject to tax under this
53 subchapter, that is registered as a distributor under article eighteen
54 of the tax law, and that produces sixty million or fewer gallons of beer
55 in this state in the taxable year, shall be allowed a credit against the
56 tax imposed by this subchapter in the amount specified in paragraph (b)

1 of this subdivision. Provided, however, that no credit shall be allowed
2 for any beer produced in excess of fifteen million five hundred thousand
3 gallons in the taxable year. Notwithstanding anything in this title to
4 the contrary, if a partnership is allowed a credit under subdivision (p)
5 of section 11-503 of this title, a taxpayer that is a partner in such
6 partnership shall not be allowed a credit under this subdivision for any
7 taxable year that includes the last day of the taxable year for which
8 the partnership is allowed such credit.

9 (b) The amount of the credit per taxpayer per taxable year for each
10 gallon of beer produced in the city of New York on or after January
11 first, two thousand seventeen shall be determined as follows:

12 (1) for the first five hundred thousand gallons of beer produced in
13 the city of New York in the taxable year, the credit shall equal twelve
14 cents per gallon; and

15 (2) for each gallon of beer produced in the city of New York in the
16 taxable year in excess of five hundred thousand gallons, the credit
17 shall equal three and eighty-six one-hundredths cents per gallon. In no
18 event shall the credit allowed under this subdivision for any taxable
19 year reduce the tax due for such year to less than the amount prescribed
20 in subparagraph one of paragraph (e) of subdivision one of this section.
21 However, if the amount of credit allowed under this subdivision for any
22 taxable year reduces the tax to such amount, any amount of credit thus
23 not deductible in such taxable year shall be treated as an overpayment
24 of tax to be credited or refunded in accordance with the provisions of
25 section 11-677 of this chapter; provided, however, that notwithstanding
26 the provisions of section 11-679 of this chapter, no interest shall be
27 paid thereon.

28 23. Credit for the provision of child care. In addition to any other
29 credit allowed under this section, a taxpayer whose application for a
30 credit authorized by section 11-144 of this title has been approved by
31 the department of finance shall be allowed a credit against the tax
32 imposed by this chapter. The amount of the credit shall be determined as
33 provided in such section. To the extent the amount of the credit allowed
34 by this subdivision exceeds the amount of tax due pursuant to this
35 subchapter, as calculated without such credit, such excess amount shall
36 be treated as an overpayment of tax to be credited or refunded in
37 accordance with the provisions of section 11-677 of this chapter,
38 provided, however, that notwithstanding the requirements of section
39 11-679 of this chapter to the contrary, no interest shall be paid there-
40 on.

41 § 11-654.1 Net operating loss. 1. In computing the business income
42 subject to tax, taxpayers shall be allowed both a prior net operating
43 loss conversion subtraction under subdivision two of this section and a
44 net operating loss deduction under subdivision three of this section.
45 The prior net operating loss conversion subtraction computed under
46 subdivision two of this section shall be applied against business income
47 before the net operating loss deduction computed under subdivision three
48 of this section.

49 2. Prior net operating loss conversion subtraction. (a) Definitions.
50 (1) "Base year" means the last taxable year beginning on or after Janu-
51 ary first, two thousand fourteen and before January first, two thousand
52 fifteen.

53 (2) "Unabsorbed net operating loss" means the unabsorbed portion of
54 net operating loss as calculated under paragraph (f) of subdivision
55 eight of section 11-602 of this chapter or subdivision (k-1) of section
56 11-641 of this chapter, as such sections were in effect on December

1 thirty-first, two thousand fourteen, that was not deductible in previous
2 taxable years and was eligible for carryover on the last day of the base
3 year subject to the limitations for deduction under such sections,
4 including any net operating loss sustained by the taxpayer during the
5 base year.

6 (3) "Base year BAP" means the taxpayer's business allocation percent-
7 age as calculated under paragraph (a) of subdivision three of section
8 11-604 of this chapter for the base year, or the taxpayer's allocation
9 percentage as calculated under section 11-642 of this chapter for
10 purposes of calculating entire net income for the base year, as such
11 sections were in effect on December thirty-first, two thousand fourteen.

12 (4) "Base year tax rate" means the taxpayer's tax rate for the base
13 year as applied to entire net income and calculated under subdivision
14 one of section 11-604 of this chapter or subdivision (a) of section
15 11-643.5 of this chapter, as such provisions were in effect on December
16 thirty-first, two thousand fourteen.

17 (b) The prior net operating loss conversion subtraction shall be
18 calculated as follows:

19 (1) The taxpayer shall first calculate the tax value of its unabsorbed
20 net operating loss for the base year. The value is equal to the product
21 of (i) the amount of the taxpayer's unabsorbed net operating loss, (ii)
22 the taxpayer's base year BAP, and (iii) the taxpayer's base year tax
23 rate.

24 (2) The product determined under subparagraph one of this paragraph
25 shall then be divided by eight and eighty-five one-hundredths per centum
26 or, in the case of a financial corporation, as defined in clause (i) of
27 subparagraph one of paragraph (e) of subdivision one of section 11-654
28 of this subchapter, the product determined under subparagraph one of
29 this paragraph shall then be divided by nine per centum. This result
30 shall equal the taxpayer's prior net operating loss conversion
31 subtraction pool.

32 (3) The taxpayer's prior net operating loss conversion subtraction for
33 the taxable year shall equal one-tenth of its prior net operating loss
34 conversion subtraction pool, plus any amount of unused prior net operat-
35 ing loss conversion subtraction from preceding taxable years.

36 (4) In lieu of the prior net operating loss conversion subtraction
37 described in subparagraph three of this paragraph, if the taxpayer so
38 elects, the taxpayer's prior net operating loss conversion subtraction
39 for its taxable years beginning on or after January first, two thousand
40 fifteen and before January first, two thousand seventeen shall equal, in
41 each year, not more than one-half of its prior net operating loss
42 conversion subtraction pool until the pool is exhausted. If the pool is
43 not exhausted at the end of such time period, the remainder of the pool
44 shall be forfeited. The taxpayer shall make such election, which shall
45 be revocable, on its first return for the tax year beginning on or after
46 January first, two thousand fifteen and before January first, two thou-
47 sand sixteen by the due date for such return, determined with regard to
48 extensions.

49 (c) (1) Where a taxpayer was properly included or required to be
50 included in a combined report for the base year pursuant to section
51 11-605 of this chapter or a combined return for the base year pursuant
52 to section 11-646 of this chapter, as such sections were in effect on
53 December thirty-first, two thousand fourteen, and the members of the
54 combined group for the base year are the same as the members of the
55 combined group for the taxable year immediately succeeding the base
56 year, the combined group shall calculate its prior net operating loss

1 conversion subtraction pool using the combined group's total unabsorbed
2 net operating loss, base year BAP, and base year tax rate.

3 (2) If a combined group includes additional members in the taxable
4 year immediately succeeding the base year that were not included in the
5 combined group during the base year, each base year combined group and
6 each taxpayer that filed separately for the base year but is included in
7 the combined group in the taxable year succeeding the base year shall
8 calculate its prior net operating loss conversion subtraction pool, and
9 the sum of the pools shall be the combined prior net operating loss
10 conversion subtraction pool of the combined group.

11 (3) If a taxpayer was properly included in a combined report for the
12 base year and files a separate report for a subsequent taxable year,
13 then the amount of remaining prior net operating loss conversion
14 subtraction allowed to the taxpayer filing such separate report shall be
15 proportionate to the amount that such taxpayer contributed to the prior
16 net operating loss conversion subtraction pool on a combined basis, and
17 the remaining prior net operating loss conversion subtraction allowed to
18 the remaining members of the combined group shall be reduced accord-
19 ingly.

20 (4) If a taxpayer filed a separate report for the base year and is
21 properly included in a combined report for a subsequent taxable year,
22 then the prior net operating loss conversion subtraction pool of the
23 combined group shall be increased by the amount of the remaining prior
24 net operating loss conversion subtraction allowed to the taxpayer at the
25 time the taxpayer is properly included in the combined group.

26 (d) The prior net operating loss conversion subtraction may be used to
27 reduce the taxpayer's tax on allocated business income to the higher of
28 the tax on business capital under clause (ii) of subparagraph one of
29 paragraph (e) of subdivision one of section 11-654 of this subchapter or
30 the fixed dollar minimum under clause (iv) of subparagraph one of para-
31 graph (e) of subdivision one of section 11-654 of this subchapter.
32 Unless the taxpayer has made the election provided for in subparagraph
33 four of paragraph (b) of this subdivision, any amount of unused prior
34 net operating loss conversion subtraction shall be carried forward to a
35 subsequent tax year or subsequent tax years until the prior net operat-
36 ing loss conversion subtraction pool is exhausted, but for no longer
37 than twenty taxable years or the taxable year beginning on or after
38 January first, two thousand thirty-five but before January first, two
39 thousand thirty-six, whichever comes first. Such amount carried forward
40 shall not be subject to the one-tenth limitation for the subsequent tax
41 year or years under subparagraph three of paragraph (b) of this subdivi-
42 sion. However, if the taxpayer elects to compute its prior net operat-
43 ing loss conversion subtraction pursuant to subparagraph four of para-
44 graph (b) of this subdivision, the taxpayer shall not carry forward any
45 unused amount of such prior net operating loss conversion subtraction to
46 any tax year beginning on or after January first, two thousand seven-
47 teen.

48 3. In computing business income, a net operating loss deduction shall
49 be allowed. A net operating loss deduction shall be the amount of net
50 operating loss or losses from one or more taxable years that are carried
51 forward or carried back to a particular taxable year. A net operating
52 loss shall be the amount of a business loss incurred in a particular tax
53 year multiplied by the business allocation percentage for that year as
54 determined under subdivision three of section 11-654 of this subchapter.
55 The maximum net operating loss deduction that is allowed in a taxable
56 year shall be the amount that reduces the taxpayer's tax on allocated

1 business income to the higher of the tax on business capital under
2 clause (ii) of subparagraph one of paragraph (e) of subdivision one of
3 section 11-654 of this subchapter or the fixed dollar minimum amount
4 under clause (iv) of subparagraph one of paragraph (e) of subdivision
5 one of section 11-654 of this subchapter. Such net operating loss
6 deduction and net operating loss shall be determined in accordance with
7 the following:

8 (a) Such net operating loss deduction shall not be limited to the
9 amount allowed under section one hundred seventy-two of the internal
10 revenue code or the amount that would have been allowed if the taxpayer
11 did not have an election under subchapter S of chapter one of the inter-
12 nal revenue code in effect for the applicable tax year.

13 (b) Such net operating loss deduction shall not include any net oper-
14 ating loss incurred during any taxable year beginning prior to January
15 first, two thousand fifteen, or during any taxable year in which the
16 taxpayer was not subject to the tax imposed by this subchapter.

17 (c) A taxpayer that files as part of a federal consolidated return but
18 on a separate basis for purposes of this subchapter shall compute its
19 deduction and loss as if it were filing on a separate basis for federal
20 income tax purposes.

21 (d) A net operating loss may be carried back three taxable years
22 preceding the taxable year of the loss except that no loss may be
23 carried back to a taxable year beginning before January first, two thou-
24 sand fifteen. The loss first shall be carried to the earliest of the
25 three taxable years preceding the taxable year of the loss. If it is not
26 entirely used in that year, it shall be carried to the second taxable
27 year preceding the taxable year of the loss, and any remaining amount
28 shall be carried to the taxable year immediately preceding the taxable
29 year of the loss. Any unused amount of loss then remaining may be
30 carried forward for as many as twenty taxable years following the taxa-
31 ble year of the loss. Losses carried forward are carried forward first
32 to the taxable year immediately following the taxable year of the loss,
33 then to the second taxable year following the taxable year of the loss,
34 and then to the next immediately subsequent taxable year or years until
35 the loss is used up or the twentieth taxable year following the taxable
36 year of the loss, whichever comes first.

37 (e) Such net operating loss deduction shall not include any net oper-
38 ating loss incurred during any taxable year commencing after January
39 first, two thousand fifteen if the taxpayer was subject to tax under
40 subchapter two or three of this chapter in that year; provided, however,
41 any year commencing after January first, two thousand fifteen that the
42 taxpayer was subject to tax under subchapter two or three of this chap-
43 ter in that year must be treated as a taxable year for purposes of
44 determining the number of taxable years to which a net operating loss
45 may be carried forward.

46 (f) Where there are two or more allocated net operating losses, or
47 portions thereof, carried back or carried forward to be deducted in one
48 particular tax year from allocated business income, the earliest allo-
49 cated loss incurred must be applied first.

50 (g) A taxpayer may elect to waive the entire carryback period with
51 respect to a net operating loss. Such election must be made on the
52 taxpayer's original timely filed return, determined with regard to
53 extensions, for the taxable year of the net operating loss for which the
54 election is to be in effect. Once an election is made for a taxable
55 year, it shall be irrevocable for that taxable year. A separate election

1 must be made for each taxable year of the loss. This election applies to
2 all members of a combined group.

3 § 11-654.2 Receipts allocation. 1. The percentage of receipts of the
4 taxpayer to be allocated to the city for purposes of subparagraph two of
5 paragraph (a) of subdivision three of section 11-654 of this subchapter
6 shall be equal to the receipts fraction determined pursuant to this
7 section. The receipts fraction is a fraction, determined by including
8 only those receipts, net income, net gains, and other items described in
9 this section that are included in the computation of the taxpayer's
10 business income, determined without regard to the modification provided
11 in subparagraph fourteen of paragraph (a) of subdivision eight of
12 section 11-652 of this subchapter, for the taxable year. The numerator
13 of the receipts fraction shall be equal to the sum of all the amounts
14 required to be included in the numerator pursuant to the provisions of
15 this section and the denominator of the receipts fraction shall be equal
16 to the sum of all the amounts required to be included in the denominator
17 pursuant to the provisions of this section.

18 2. (a) Receipts from sales of tangible personal property where ship-
19 ments are made to points within the city or the destination of the prop-
20 erty is a point within the city shall be included in the numerator of
21 the receipts fraction. Receipts from sales of tangible personal property
22 where shipments are made to points within and without the city or the
23 destination is within and without the city shall be included in the
24 denominator of the receipts fraction.

25 (b) Receipts from sales of electricity delivered to points within the
26 city shall be included in the numerator of the receipts fraction.
27 Receipts from sales of electricity delivered to points within and with-
28 out the city shall be included in the denominator of the receipts frac-
29 tion.

30 (c) Receipts from sales of tangible personal property and electricity
31 that are traded as commodities as the term "commodity" is defined in
32 section four hundred seventy-five of the internal revenue code, shall be
33 included in the receipts fraction in accordance with clause (ix) of
34 subparagraph two of paragraph (a) of subdivision five of this section.

35 (d) Net gains, not less than zero, from the sales of real property
36 located within the city shall be included in the numerator of the
37 receipts fraction. Net gains, not less than zero, from the sales of real
38 property located within and without the city shall be included in the
39 denominator of the receipts fraction.

40 3. (a) Receipts from rentals of real and tangible personal property
41 located within the city shall be included in the numerator of the
42 receipts fraction. Receipts from rentals of real and tangible personal
43 property located within and without the city shall be included in the
44 denominator of the receipts fraction.

45 (b) Receipts of royalties from the use of patents, copyrights, trade-
46 marks, and similar intangible personal property within the city shall be
47 included in the numerator of the receipts fraction. Receipts of royalti-
48 es from the use of patents, copyrights, trademarks, and similar intan-
49 gible personal property within and without the city shall be included in
50 the denominator of the receipts fraction. A patent, copyright, trade-
51 mark, or similar intangible personal property is used within the city to
52 the extent that the activities thereunder are carried on within the
53 city.

54 (c) Receipts from the sales of rights for closed-circuit and cable
55 television transmissions of an event, other than events occurring on a
56 regularly scheduled basis, taking place within the city as a result of

1 the rendition of services by employees of the corporation, as athletes,
2 entertainers or performing artists, shall be included in the numerator
3 of the receipts fraction to the extent that such receipts are attribut-
4 able to such transmissions received or exhibited within the city.
5 Receipts from all sales of rights for closed-circuit and cable tele-
6 vision transmissions of an event, other than events occurring on a regu-
7 larly scheduled basis, shall be included in the denominator of the
8 receipts fraction.

9 4. (a) For purposes of determining the receipts fraction under this
10 section, the term "digital product" means any property or service, or
11 combination thereof, of whatever nature delivered to the purchaser
12 through the use of wire, cable, fiber-optic, laser, microwave, radio
13 wave, satellite or similar successor media, or any combination thereof.
14 Digital product includes, but is not limited to, an audio work, audi-
15 ovisual work, visual work, book or literary work, graphic work, game,
16 information or entertainment service, storage of digital products and
17 computer software by whatever means delivered. The term "delivered to"
18 includes furnished or provided to or accessed by. A digital product
19 shall not include legal, medical, accounting, architectural, research,
20 analytical, engineering or consulting services provided by the taxpayer.

21 (b) Receipts from the sale of, license to use, or granting of remote
22 access to digital products within the city, determined according to the
23 hierarchy of methods set forth in subparagraphs one through four of
24 paragraph (c) of this subdivision, shall be included in the numerator of
25 the receipts fraction. Receipts from the sale of, license to use, or
26 granting of remote access to digital products within and without the
27 city shall be included in the denominator of the receipts fraction. The
28 taxpayer must exercise due diligence under each method described in
29 paragraph (c) of this subdivision before rejecting it and proceeding to
30 the next method in the hierarchy, and must base its determination on
31 information known to the taxpayer or information that would be known to
32 the taxpayer upon reasonable inquiry. If the receipt for a digital prod-
33 uct is comprised of a combination of property and services, it cannot be
34 divided into separate components and shall be considered to be one
35 receipt regardless of whether it is separately stated for billing
36 purposes. The entire receipt must be allocated by this hierarchy.

37 (c) The hierarchy of sourcing methods is as follows: (1) the custom-
38 er's primary use location of the digital product; (2) the location where
39 the digital product is received by the customer, or is received by a
40 person designated for receipt by the customer; (3) the receipts fraction
41 determined pursuant to this subdivision for the preceding taxable year
42 for such digital product; or (4) the receipts fraction in the current
43 taxable year for those digital products that can be sourced using the
44 hierarchy of sourcing methods in subparagraphs one and two of this para-
45 graph.

46 5. (a) A financial instrument is a "nonqualified financial instrument"
47 if it is not a qualified financial instrument. A qualified financial
48 instrument means a financial instrument that is of a type described in
49 any of clauses (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subpara-
50 graph two of this paragraph and that has been marked to market in the
51 taxable year by the taxpayer under section four hundred seventy-five or
52 section one thousand two hundred fifty-six of the internal revenue code.
53 Further, if the taxpayer has in the taxable year marked to market a
54 financial instrument of the type described in any of clauses (i), (ii),
55 (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this para-
56 graph, then any financial instrument within that type described in the

1 above specified clause or clauses that has not been marked to market by
2 the taxpayer under section four hundred seventy-five or section one
3 thousand two hundred fifty-six of the internal revenue code is a quali-
4 fied financial instrument in the taxable year, provided, however, (i) a
5 loan secured by real property shall not be a qualified financial instru-
6 ment, (ii) if the only loans that are marked to market by the taxpayer
7 under section four hundred seventy-five or section one thousand two
8 hundred fifty-six of the internal revenue code are loans secured by real
9 property, then no loans shall be qualified financial instruments, (iii)
10 stock that is investment capital as defined in paragraph (a) of subdivi-
11 sion four of section 11-652 of this subchapter shall not be a qualified
12 financial instrument, and (iv) stock that generates other exempt income
13 as defined in subdivision five-a of section 11-652 of this subchapter
14 and that is not marked to market under section four hundred seventy-five
15 or section one thousand two hundred fifty-six of the internal revenue
16 code shall not constitute a qualified financial instrument with respect
17 to the income from that stock that is described in such subdivision
18 five-a. If a corporation is included in a combined report, the defi-
19 nition of qualified financial instrument shall be determined on a
20 combined basis. In the case of RIC or a REIT that is not a captive RIC
21 or a captive REIT, a qualified financial instrument means a financial
22 instrument that is of a type described in any of clauses (i), (ii),
23 (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this para-
24 graph, other than (i) a loan secured by real property, (ii) stock that
25 is investment capital as defined in paragraph (a) of subdivision four of
26 section 11-652 of this subchapter, and (iii) stock that generates other
27 exempt income as defined in subdivision five-a of section 11-652 of this
28 subchapter with respect to the income from that stock that is described
29 in such subdivision five-a.

30 (1) In determining the inclusion of receipts and net gains from quali-
31 fied financial instruments in the receipts fraction, taxpayers may elect
32 to use the fixed percentage method described in this subparagraph for
33 qualified financial instruments. The election is irrevocable, applies to
34 all qualified financial instruments, and must be made on an annual basis
35 on the taxpayer's original, timely filed return, determined with regard
36 to extensions. If the taxpayer elects the fixed percentage method, then
37 all income, gain or loss, including marked to market net gains as
38 defined in clause (x) of subparagraph two of this paragraph, from quali-
39 fied financial instruments constitute business income, gain or loss. If
40 the taxpayer does not elect to use the fixed percentage method, then
41 receipts and net gains are included in the receipts fraction in accord-
42 ance with the customer sourcing method described in subparagraph two of
43 this paragraph. Under the fixed percentage method, eight percent of all
44 net income, not less than zero, from qualified financial instruments
45 shall be included in the numerator of the receipts fraction. All net
46 income, not less than zero, from qualified financial instruments shall
47 be included in the denominator of the receipts fraction.

48 (2) Receipts and net gains from qualified financial instruments, in
49 cases where the taxpayer did not elect to use the fixed percentage meth-
50 od described in subparagraph one of this paragraph, and from nonquali-
51 fied financial instruments shall be included in the receipts fraction in
52 accordance with this subparagraph. For purposes of this paragraph, an
53 individual is deemed to be located within the city if his or her billing
54 address is within the city. A business entity is deemed to be located
55 within the city if its commercial domicile is located within the city.

1 (i)(A) Receipts constituting interest from loans secured by real prop-
2 erty located within the city shall be included in the numerator of the
3 receipts fraction. Receipts constituting interest from loans secured by
4 real property located within and without the city shall be included in
5 the denominator of the receipts fraction.

6 (B) Receipts constituting interest from loans not secured by real
7 property shall be included in the numerator of the receipts fraction if
8 the borrower is located within the city. Receipts constituting interest
9 from loans not secured by real property, whether the borrower is located
10 within or without the city, shall be included in the denominator of the
11 receipts fraction.

12 (C) Net gains, not less than zero, from sales of loans secured by real
13 property shall be included in the numerator of the receipts fraction as
14 provided in this subclause. The amount of net gains from the sales of
15 loans secured by real property included in the numerator of the receipts
16 fraction shall be determined by multiplying the net gains by a fraction,
17 the numerator of which shall be the amount of gross proceeds from sales
18 of loans secured by real property located within the city and the denom-
19 inator of which shall be the gross proceeds from sales of loans secured
20 by real property located within and without the city. Gross proceeds
21 shall be determined after the deduction of any cost incurred to acquire
22 the loans but shall not be less than zero. Net gains, not less than
23 zero, from sales of loans secured by real property located within and
24 without the city shall be included in the denominator of the receipts
25 fraction.

26 (D) Net gains, not less than zero, from sales of loans not secured by
27 real property shall be included in the numerator of the receipts frac-
28 tion as provided in this subclause. The amount of net gains from the
29 sales of loans not secured by real property included in the numerator of
30 the receipts fraction shall be determined by multiplying the net gains
31 by a fraction, the numerator of which shall be the amount of gross
32 proceeds from sales of loans not secured by real property to purchasers
33 located within the city and the denominator of which shall be the amount
34 of gross proceeds from sales of loans not secured by real property to
35 purchasers located within and without the city. Gross proceeds shall be
36 determined after the deduction of any cost incurred to acquire the loans
37 but shall not be less than zero. Net gains, not less than zero, from
38 sales of loans not secured by real property shall be included in the
39 denominator of the receipts fraction.

40 (E) For purposes of this subdivision, a loan is secured by real prop-
41 erty if fifty percent or more of the value of the collateral used to
42 secure the loan, when valued at fair market value as of the time the
43 loan was entered into, consists of real property.

44 (ii) Federal, state, and municipal debt. Receipts constituting inter-
45 est and net gains from sales of debt instruments issued by the United
46 States, any state, or political subdivision of a state shall not be
47 included in the numerator of the receipts fraction. Receipts constitut-
48 ing interest and net gains, not less than zero, from sales of debt
49 instruments issued by the United States and the state of New York or its
50 political subdivisions, including the city, shall be included in the
51 denominator of the receipts fraction. Fifty percent of the receipts
52 constituting interest and net gains, not less than zero, from sales of
53 debt instruments issued by other states or their political subdivisions
54 shall be included in the denominator of the receipts fraction.

55 (iii) Asset backed securities and other government agency debt. Eight
56 percent of the interest income from asset backed securities or other

1 securities issued by government agencies, including but not limited to
2 securities issued by the government national mortgage association
3 (GNMA), the federal national mortgage association (FNMA), the federal
4 home loan mortgage corporation (FHLMC), or the small business adminis-
5 tration, or eight percent of the interest income from asset backed secu-
6 rities issued by other entities shall be included in the numerator of
7 the receipts fraction. Eight percent of the net gains, not less than
8 zero, from (A) sales of asset backed securities or other securities
9 issued by government agencies, including but not limited to securities
10 issued by GNMA, FNMA, FHLMC, or the small business administration, or
11 (B) sales of other asset backed securities that are sold through a
12 registered securities broker or dealer or through a licensed exchange,
13 shall be included in the numerator of the receipts fraction. The amount
14 of net gains, not less than zero, from sales of other asset backed secu-
15 rities not referenced in subclause (A) or (B) of this clause included in
16 the numerator of the receipts fraction shall be determined by multiply-
17 ing such net gains by a fraction, the numerator of which shall be the
18 amount of gross proceeds from such sales to purchasers located in the
19 city and the denominator of which shall be the amount of gross proceeds
20 from such sales to purchasers located within and without the city.
21 Receipts constituting interest income from asset backed securities and
22 other securities referenced in this clause and net gains, not less than
23 zero, from sales of asset backed securities and other securities refer-
24 enced in this clause shall be included in the denominator of the
25 receipts fraction. Gross proceeds shall be determined after the
26 deduction of any cost to acquire the securities but shall not be less
27 than zero.

28 (iv) Receipts constituting interest from corporate bonds shall be
29 included in the numerator of the receipts fraction if the commercial
30 domicile of the issuing corporation is within the city. Eight percent of
31 the net gains, not less than zero, from sales of corporate bonds sold
32 through a registered securities broker or dealer or through a licensed
33 exchange shall be included in the numerator of the receipts fraction.
34 The amount of net gains, not less than zero, from other sales of corpo-
35 rate bonds included in the numerator of the receipts fraction shall be
36 determined by multiplying such net gains by a fraction, the numerator of
37 which is the amount of gross proceeds from such sales to purchasers
38 located within the city and the denominator of which is the amount of
39 gross proceeds from sales to purchasers located within and without the
40 city. Receipts constituting interest from corporate bonds, whether the
41 issuing corporation's commercial domicile is within or without the city,
42 and net gains, not less than zero, from sales of corporate bonds to
43 purchasers within and without the city shall be included in the denomi-
44 nator of the receipts fraction. Gross proceeds shall be determined after
45 the deduction of any cost to acquire the bonds but shall not be less
46 than zero.

47 (v) Eight percent of net interest income, not less than zero, from
48 reverse repurchase agreements and securities borrowing agreements shall
49 be included in the numerator of the receipts fraction. Net interest
50 income, not less than zero, from reverse repurchase agreements and secu-
51 rities borrowing agreements shall be included in the denominator of the
52 receipts fraction. Net interest income from reverse repurchase agree-
53 ments and securities borrowing agreements shall be determined for
54 purposes of this subdivision after the deduction of the interest expense
55 from the taxpayer's repurchase agreements and securities lending agree-
56 ments but shall not be less than zero. For this calculation, the amount

1 of such interest expense shall be the interest expense associated with
2 the sum of the value of the taxpayer's repurchase agreements where it is
3 the seller/borrower plus the value of the taxpayer's securities lending
4 agreements where it is the securities lender, provided such sum is
5 limited to the sum of the value of the taxpayer's reverse repurchase
6 agreements where it is the purchaser/lender plus the value of the
7 taxpayer's securities lending agreements where it is the securities
8 borrower.

9 (vi) Eight percent of the net interest, not less than zero, from
10 federal funds shall be included in the numerator of the receipts frac-
11 tion. The net interest, not less than zero, from federal funds shall be
12 included in the denominator of the receipts fraction. Net interest from
13 federal funds shall be determined after deduction of interest expense
14 from federal funds.

15 (vii) Dividends from stock, net gains, not less than zero, from sales
16 of stock and net gains, not less than zero, from sales of partnership
17 interests shall not be included in either the numerator or denominator
18 of the receipts fraction unless the commissioner of finance determines
19 pursuant to subdivision eleven of this section that inclusion of such
20 dividends and net gains, not less than zero, is necessary to properly
21 reflect the business income or capital of the taxpayer.

22 (viii)(A) Receipts constituting interest from other financial instru-
23 ments shall be included in the numerator of the receipts fraction if the
24 payor is located within the city. Receipts constituting interest from
25 other financial instruments, whether the payor is within or without the
26 city, shall be included in the denominator of the receipts fraction.

27 (B) Net gains, not less than zero, from sales of other financial
28 instruments and other income, not less than zero, from other financial
29 instruments where the purchaser or payor is located within the city
30 shall be included in the numerator of the receipts fraction, provided
31 that, if the purchaser or payor is a registered securities broker or
32 dealer or the transaction is made through a licensed exchange, then
33 eight percent of the net gains, not less than zero, or other income, not
34 less than zero, shall be included in the numerator of the receipts frac-
35 tion. Net gains, not less than zero, from sales of other financial
36 instruments and other income, not less than zero, from other financial
37 instruments shall be included in the denominator of the receipts frac-
38 tion.

39 (ix) Net income, not less than zero, from sales of physical commod-
40 ities shall be included in the numerator of the receipts fraction as
41 provided in this clause. The amount of net income from sales of physical
42 commodities included in the numerator of the receipts fraction shall be
43 determined by multiplying the net income from sales of physical commod-
44 ities by a fraction, the numerator of which shall be the amount of
45 receipts from sales of physical commodities actually delivered to points
46 within the city or, if there is no actual delivery of the physical
47 commodity, sold to purchasers located within the city, and the denomina-
48 tor of which shall be the amount of receipts from sales of physical
49 commodities actually delivered to points within and without the city or,
50 if there is no actual delivery of the physical commodity, sold to
51 purchasers located within and without the city. Net income, not less
52 than zero, from sales of physical commodities shall be included in the
53 denominator of the receipts fraction. Net income, not less than zero,
54 from sales of physical commodities shall be determined after the
55 deduction of the cost to acquire or produce the physical commodities.

1 (x)(A) For purposes of this subdivision, "marked to market" means that
2 a financial instrument is, under section four hundred seventy-five or
3 section twelve hundred fifty-six of the internal revenue code, treated
4 by the taxpayer as sold for its fair market value on the last business
5 day of the taxpayer's taxable year. "Marked to market gain or loss"
6 means the gain or loss recognized by the taxpayer under section four
7 hundred seventy-five or section twelve hundred fifty-six of the internal
8 revenue code because the financial instrument is treated as sold for its
9 fair market value on the last business day of the taxpayer's taxable
10 year.

11 (B) The amount of marked to market net gains, not less than zero, from
12 each type of financial instrument that is marked to market included in
13 the numerator of the receipts fraction shall be determined by multiply-
14 ing the marked to market net gains, not less than zero, from such type
15 of financial instrument by a fraction, the numerator of which shall be
16 the numerator of the receipts fraction for net gains from that type of
17 financial instrument determined under the applicable clause of this
18 subparagraph and the denominator of which shall be the denominator of
19 the receipts fraction for net gains from that type of financial instru-
20 ment determined under the applicable clause of this subparagraph. Marked
21 to market net gains, not less than zero, from financial instruments for
22 which the numerator of the receipts fraction for net gains is determined
23 under this subparagraph shall be included in the denominator of the
24 receipts fraction.

25 (C) If the type of financial instrument that is marked to market is
26 not otherwise sourced by the taxpayer under this subparagraph, or if the
27 taxpayer has a net loss from the sales of that type of financial instru-
28 ment under the applicable clause of this subparagraph, the amount of
29 marked to market net gains, not less than zero, from that type of finan-
30 cial instrument included in the numerator of the receipts fraction shall
31 be determined by multiplying the marked to market net gains, but not
32 less than zero, from that type of financial instrument by a fraction,
33 the numerator of which shall be the sum of the amount of receipts
34 included in the numerator of the receipts fraction under clauses (i)
35 through (ix) of this subparagraph and subclause (B) of this clause, and
36 the denominator of which shall be the sum of the amount of receipts
37 included in the denominator of the receipts fraction under clauses (i)
38 through (ix) of this subparagraph and subclause (B) of this clause.
39 Marked to market net gains, not less than zero, for which the amount to
40 be included in the numerator of the receipts fraction is determined
41 under this subparagraph shall be included in the denominator of the
42 receipts fraction.

43 (b) Receipts of a registered securities broker or dealer from securi-
44 ties or commodities broker or dealer activities described in this para-
45 graph shall be deemed to be generated within the city as described in
46 subparagraphs one through eight of this paragraph. Receipts from such
47 activities generated within the city shall be included in the numerator
48 of the receipts fraction. Receipts from such activities generated within
49 and without the city shall be included in the denominator of the
50 receipts fraction. For the purposes of this paragraph, the term "securi-
51 ties" shall have the same meaning as in paragraph two of subsection (c)
52 of section four hundred seventy-five of the internal revenue code and
53 the term "commodities" shall have the same meaning as in paragraph two
54 of subsection (e) of section four hundred seventy-five of the internal
55 revenue code.

1 (1) Receipts constituting brokerage commissions derived from the
2 execution of securities or commodities purchase or sales orders for the
3 accounts of customers shall be deemed to be generated within the city if
4 the mailing address in the records of the taxpayer of the customer who
5 is responsible for paying such commissions is within the city.

6 (2) Receipts constituting margin interest earned on behalf of broker-
7 age accounts shall be deemed to be generated within the city if the
8 mailing address in the records of the taxpayer of the customer who is
9 responsible for paying such margin interest is within the city.

10 (3) (i) Receipts constituting fees earned by the taxpayer for advisory
11 services to a customer in connection with the underwriting of securities
12 for such customer, such customer being the entity that is contemplating
13 issuing or is issuing securities, or fees earned by the taxpayer for
14 managing an underwriting shall be deemed to be generated within the city
15 if the mailing address in the records of the taxpayer of such customer
16 who is responsible for paying such fees is within the city.

17 (ii) Receipts constituting the primary spread of selling concession
18 from underwritten securities shall be deemed to be generated within the
19 city if the customer is located within the city.

20 (iii) The term "primary spread" means the difference between the price
21 paid by the taxpayer to the issuer of the securities being marketed and
22 the price received from the subsequent sale of the underwritten securi-
23 ties at the initial public offering price, less any selling concession
24 and any fees paid to the taxpayer for advisory services or any manager's
25 fees, if such fees are not paid by the customer to the taxpayer sepa-
26 rately. The term "public offering price" means the price agreed upon by
27 the taxpayer and the issuer at which the securities are to be offered to
28 the public. The term "selling concession" means the amount paid to the
29 taxpayer for participating in the underwriting of a security where the
30 taxpayer is not the lead underwriter.

31 (4) Receipts constituting account maintenance fees shall be deemed to
32 be generated within the city if the mailing address in the records of
33 the taxpayer of the customer who is responsible for paying such account
34 maintenance fees is within the city.

35 (5) Receipts constituting fees for management or advisory services,
36 including fees for advisory services in relation to merger or acquisi-
37 tion activities, but excluding fees paid for services described in para-
38 graph (d) of this subdivision, shall be deemed to be generated within
39 the city if the mailing address in the records of the taxpayer of the
40 customer who is responsible for paying such fees is within the city.

41 (6) Receipts constituting interest earned by the taxpayer on loans and
42 advances made by the taxpayer to a corporation affiliated with the
43 taxpayer but with which the taxpayer is not permitted or required to
44 file a combined report pursuant to section 11-654.3 of this subchapter
45 shall be deemed to arise from services performed at the principal place
46 of business of such affiliated corporation.

47 (7) If the taxpayer receives any of the receipts enumerated in subpar-
48 agraphs one through four of this paragraph as a result of a securities
49 correspondent relationship such taxpayer has with another broker or
50 dealer with the taxpayer acting in this relationship as the clearing
51 firm, such receipts shall be deemed to be generated within the city to
52 the extent set forth in each of such subparagraphs. The amount of such
53 receipts shall exclude the amount the taxpayer is required to pay to the
54 correspondent firm for such correspondent relationship. If the taxpayer
55 receives any of the receipts enumerated in subparagraphs one through
56 four of this paragraph as a result of a securities correspondent

1 relationship such taxpayer has with another broker or dealer with the
2 taxpayer acting in this relationship as the introducing firm, such
3 receipts shall be deemed to be generated within the city to the extent
4 set forth in each of such subparagraphs.

5 (8) If, for the purposes of subparagraph one, subparagraph two, clause
6 (i) of subparagraph three, subparagraph four, or subparagraph five of
7 this paragraph, the taxpayer is unable from its records to determine the
8 mailing address of the customer, eight percent of the receipts shall be
9 included in the numerator of the receipts fraction.

10 (c) Receipts relating to the bank, credit, travel, and entertainment
11 card activities described in this paragraph shall be deemed to be gener-
12 ated within the city as described in subparagraphs one through four of
13 this paragraph. Receipts from such activities generated within the city
14 shall be included in the numerator of the receipts fraction. Receipts
15 from such activities generated within and without the city shall be
16 included in the denominator of the receipts fraction.

17 (1) Receipts constituting interest, and fees and penalties in the
18 nature of interest, from bank, credit, travel and entertainment card
19 receivables shall be deemed to be generated within the city if the mail-
20 ing address of the card holder in the records of the taxpayer is within
21 the city;

22 (2) Receipts from service charges and fees from such cards shall be
23 deemed to be generated within the city if the mailing address of the
24 card holder in the records of the taxpayer is within the city;

25 (3) Receipts from merchant discounts shall be deemed to be generated
26 within the city if the merchant is located within the city. In the case
27 of a merchant with locations both within and without the city, only
28 receipts from merchant discounts attributable to sales made from
29 locations within the city are allocated to the city. It shall be
30 presumed that the location of the merchant is the address of the
31 merchant shown on the invoice submitted by the merchant to the taxpayer;
32 and

33 (4) Receipts from credit card authorization processing, and clearing
34 and settlement processing received by a credit card processor shall be
35 deemed to be generated within the city if the location where the credit
36 card processor's customer accesses the credit card processor's network
37 is located within the city. The amount of all other receipts received by
38 a credit card processor not specifically addressed in subdivisions one
39 through nine or subdivision twelve of this section deemed to be gener-
40 ated within the city shall be determined by multiplying the total amount
41 of such other receipts by the average of (i) eight percent and (ii) the
42 percent of Staten Island access points. The percent of Staten Island
43 access points shall be the number of locations in Staten Island from
44 which the credit card processor's customers access the credit card
45 processor's network divided by the total number of locations in the
46 United States where the credit card processor's customers access the
47 credit card processor's network.

48 (d) Receipts received from an investment company arising from the sale
49 of management, administration or distribution services to such invest-
50 ment company shall be included in the denominator of the receipts frac-
51 tion. The portion of such receipts included in the numerator of the
52 receipts fraction, such portion referred to herein as the Staten Island
53 portion, shall be determined as provided in this paragraph.

54 (1) The Staten Island portion shall be the product of the total of
55 such receipts from the sale of such services and a fraction. The numera-
56 tor of that fraction shall be the sum of the monthly percentages, as

1 defined hereinafter, determined for each month of the investment compa-
2 ny's taxable year for federal income tax purposes which taxable year
3 ends within the taxable year of the taxpayer, but excluding any month
4 during which the investment company had no outstanding shares. The
5 monthly percentage for each such month shall be determined by dividing
6 the number of shares in the investment company that are owned on the
7 last day of the month by shareholders that are located in the city by
8 the total number of shares in the investment company outstanding on that
9 date. The denominator of the fraction shall be the number of such month-
10 ly percentages.

11 (2)(i) For purposes of this paragraph, an individual, estate or trust
12 shall be deemed to be located within the city if his, her or its mailing
13 address in the records of the investment company is located within the
14 city. A business entity is deemed to be located within the city if its
15 commercial domicile is located within the city.

16 (ii) For purposes of this paragraph, the term "investment company"
17 means a regulated investment company, as defined in section eight
18 hundred fifty-one of the internal revenue code, and a partnership to
19 which subsection (a) of section seven thousand seven hundred four of the
20 internal revenue code applies, by virtue of paragraph three of
21 subsection (c) of section seven thousand seven hundred four of such
22 code, and that meets the requirements of subsection (b) of section eight
23 hundred fifty-one of such code. The provisions of this subparagraph
24 shall be applied to the taxable year for federal income tax purposes of
25 the business entity that is asserted to constitute an investment company
26 that ends within the taxable year of the taxpayer.

27 (iii) For purposes of this paragraph, the term "receipts received from
28 an investment company" includes amounts received directly from an
29 investment company as well as amounts received from the shareholders in
30 such investment company, in their capacity as such.

31 (iv) For purposes of this paragraph, the term "management services"
32 means the rendering of investment advice to an investment company,
33 making determinations as to when sales and purchases of securities are
34 to be made on behalf of an investment company, or the selling or
35 purchasing of securities constituting assets of an investment company,
36 and related activities, but only where such activity or activities are
37 performed pursuant to a contract with the investment company entered
38 into pursuant to subsection (a) of section fifteen of the federal
39 investment company act of nineteen hundred forty, as amended.

40 (v) For purposes of this paragraph, the term "distribution services"
41 means the services of advertising, servicing investor accounts, includ-
42 ing redemptions, marketing shares or selling shares of an investment
43 company, but, in the case of advertising, servicing investor accounts,
44 including redemptions, or marketing shares, only where such service is
45 performed by a person who is, or was, in the case of a closed end compa-
46 ny, also engaged in the service of selling such shares. In the case of
47 an open end company, such service of selling shares must be performed
48 pursuant to a contract entered into pursuant to subsection (b) of
49 section fifteen of the federal investment company act of nineteen
50 hundred forty, as amended.

51 (vi) For purposes of this paragraph, the term "administration
52 services" includes clerical, accounting, bookkeeping, data processing,
53 internal auditing, legal and tax services performed for an investment
54 company but only if the provider of such service or services during the
55 taxable year in which such service or services are sold also sells

1 management or distribution services, as defined in subparagraph (v) of
2 this paragraph, to such investment company.

3 (e) For purposes of this subdivision, a taxpayer shall use the follow-
4 ing hierarchy to determine the commercial domicile of a business entity,
5 based on the information known to the taxpayer or information that would
6 be known upon reasonable inquiry: (1) the seat of management and control
7 of the business entity; and (2) the billing address of the business
8 entity in the taxpayer's records. The taxpayer must exercise due dili-
9 gence before rejecting the first method in this hierarchy and proceeding
10 to the next method.

11 (f) For purposes of this subdivision, the term "registered securities
12 broker or dealer" means a broker or dealer registered as such by the
13 securities and exchange commission or a broker or dealer registered as
14 such by the commodities futures trading commission, and shall include an
15 OTC derivatives dealer as defined under regulations of the securities
16 and exchange commission at title 17, part 240, section 3b-12 of the code
17 of federal regulations (17 CFR 240.3b-12).

18 5-a. Notwithstanding any other provision of this section, net global
19 intangible low-taxed income shall be included in the receipts fraction
20 as provided in this subdivision. Receipts constituting net global intan-
21 gible low-taxed income shall not be included in the numerator of the
22 receipts fraction. Receipts constituting net global intangible low-taxed
23 income shall be included in the denominator of the receipts fraction.
24 For purposes of this subdivision, the term "net global intangible low-
25 taxed income" means the amount required to be included in the taxpayer's
26 federal gross income pursuant to subsection (a) of section nine hundred
27 fifty-one-D of the internal revenue code less the amount of the
28 deduction allowed under clause (i) of subparagraph (B) of paragraph one
29 of subdivision (a) of section two hundred fifty of such code.

30 6. Receipts from the conduct of a railroad business, including surface
31 railroad, whether or not operated by steam, subway railroad, elevated
32 railroad, palace car or sleeping car business, or a trucking business
33 shall be included in the numerator of the receipts fraction as follows.
34 The amount of receipts from the conduct of a railroad business or a
35 trucking business included in the numerator of the receipts fraction
36 shall be determined by multiplying the amount of receipts from such
37 business by a fraction, the numerator of which shall be the miles in
38 such business within the city during the period covered by the taxpay-
39 er's report and the denominator of which shall be the miles in such
40 business within and without the city during such period. Receipts from
41 the conduct of the railroad business or a trucking business shall be
42 included in the denominator of the receipts fraction.

43 7. (a) Receipts of a taxpayer acting as principal from the activity of
44 air freight forwarding and like indirect air carrier receipts arising
45 from such activity shall be included in the numerator of the receipts
46 fraction as follows: one hundred percent of such receipts if both the
47 pickup and delivery associated with such receipts are made within the
48 city and fifty percent of such receipts if either the pickup or delivery
49 associated with such receipts is made within this city. Such receipts,
50 whether the pickup or delivery associated with the receipts is within or
51 without the city, shall be included in the denominator of the receipts
52 fraction.

53 (b)(1)(i) The portion of receipts of a taxpayer from aviation
54 services, other than services described in paragraph (a) of this subdivi-
55 sion, but including the receipts of a qualified air freight forwarder,
56 to be included in the numerator of the receipts fraction shall be deter-

1 mined by multiplying its receipts from such aviation services by a
2 percentage which is equal to the arithmetic average of the following
3 three percentages:

4 (A) the percentage determined by dividing the aircraft arrivals and
5 departures within the city by the taxpayer during the period covered by
6 its report by the total aircraft arrivals and departures within and
7 without the city during such period; provided, however, arrivals and
8 departures solely for maintenance or repair, refueling, where no debar-
9 kation or embarkation of traffic occurs, arrivals and departures of
10 ferry and personnel training flights or arrivals and departures in the
11 event of emergency situations shall not be included in computing such
12 arrival and departure percentage; provided, further, the commissioner of
13 finance may also exempt from such percentage aircraft arrivals and
14 departures of all non-revenue flights including flights involving the
15 transportation of officers or employees receiving air transportation to
16 perform maintenance or repair services or where such officers or employ-
17 ees are transported in conjunction with an emergency situation or the
18 investigation of an air disaster, other than on a scheduled flight;
19 provided, however, that arrivals and departures of flights transporting
20 officers and employees receiving air transportation for purposes other
21 than specified above, without regard to remuneration, shall be included
22 in computing such arrival and departure percentage;

23 (B) the percentage determined by dividing the revenue tons handled by
24 the taxpayer at airports within the city during such period by the total
25 revenue tons handled by it at airports within and without the city
26 during such period; and

27 (C) the percentage determined by dividing the taxpayer's originating
28 revenue within the city for such period by its total originating revenue
29 within and without the city for such period.

30 (ii) As used herein the term "aircraft arrivals and departures" means
31 the number of landings and takeoffs of the aircraft of the taxpayer and
32 the number of air pickups and deliveries by the aircraft of such taxpay-
33 er; the term "originating revenue" means revenue to the taxpayer from
34 the transportation of revenue passengers and revenue property first
35 received by the taxpayer either as originating or connecting traffic at
36 airports; and the term "revenue tons handled by the taxpayer at
37 airports" means the weight in tons of revenue passengers, at two hundred
38 pounds per passenger, and revenue cargo first received either as origi-
39 nating or connecting traffic or finally discharged by the taxpayer at
40 airports.

41 (2) All such receipts of a taxpayer from aviation services described
42 in this paragraph shall be included in the denominator of the receipts
43 fraction.

44 (3) A corporation is a qualified air freight forwarder with respect to
45 another corporation:

46 (i) if it owns or controls either directly or indirectly all of the
47 capital stock of such other corporation, or if all of its capital stock
48 is owned or controlled either directly or indirectly by such other
49 corporation, or if all of the capital stock of both corporations is
50 owned or controlled either directly or indirectly by the same interests;

51 (ii) if it is principally engaged in the business of air freight
52 forwarding; and

53 (iii) if its air freight forwarding business is carried on principally
54 with the airline or airlines operated by such other corporation.

55 8. (a) The amount of receipts from sales of advertising in newspapers
56 or periodicals included in the numerator of the receipts fraction shall

1 be determined by multiplying the total of such receipts by a fraction,
2 the numerator of which shall be the number of newspapers and periodicals
3 delivered to points within the city and the denominator of which shall
4 be the number of newspapers and periodicals delivered to points within
5 and without the city. The total of such receipts from sales of advertis-
6 ing in newspapers or periodicals shall be included in the denominator of
7 the receipts fraction.

8 (b) The amount of receipts from sales of advertising on television or
9 radio included in the numerator of the receipts fraction shall be deter-
10 mined by multiplying the total of such receipts by a fraction, the
11 numerator of which shall be the number of viewers or listeners within
12 the city and the denominator of which shall be the number of viewers or
13 listeners within and without the city. The total of such receipts from
14 sales of advertising on television or radio shall be included in the
15 denominator of the receipts fraction.

16 (c) The amount of receipts from sales of advertising not described in
17 paragraph (a) or (b) of this subdivision that is furnished, provided or
18 delivered to, or accessed by the viewer or listener through the use of
19 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
20 similar successor media or any combination thereof, included in the
21 numerator of the receipts fraction shall be determined by multiplying
22 the total of such receipts by a fraction, the numerator of which shall
23 be the number of viewers or listeners within the city and the denomina-
24 tor of which shall be the number of viewers or listeners within and
25 without the city. The total of such receipts from sales of advertising
26 described in this paragraph shall be included in the denominator of the
27 receipts fraction.

28 9. Receipts from the transportation or transmission of gas through
29 pipes shall be included in the numerator of the receipts fraction as
30 follows. The amount of receipts from the transportation or transmission
31 of gas through pipes included in the numerator of the receipts fraction
32 shall be determined by multiplying the total amount of such receipts by
33 a fraction, the numerator of which shall be the taxpayer's transporta-
34 tion units within the city and the denominator of which shall be the
35 taxpayer's transportation units within and without the city. A transpor-
36 tation unit is the transportation of one cubic foot of gas over a
37 distance of one mile. The total amount of receipts from the transporta-
38 tion or transmission of gas through pipes shall be included in the
39 denominator of the receipts fraction.

40 10. (a) Receipts from services not addressed in subdivisions one
41 through nine or subdivision twelve of this section and other business
42 receipts not addressed in such subdivisions shall be included in the
43 numerator of the receipts fraction if the location of the customer is
44 within the city. Such receipts from customers within and without the
45 city shall be included in the denominator of the receipts fraction.
46 Whether the receipts are included in the numerator of the receipts frac-
47 tion shall be determined according to the hierarchy of methods set forth
48 in paragraph (b) of this subdivision. The taxpayer must exercise due
49 diligence under each method described in such paragraph before rejecting
50 it and proceeding to the next method in the hierarchy, and must base its
51 determination on information known to the taxpayer or information that
52 would be known to the taxpayer upon reasonable inquiry.

53 (b) The hierarchy of methods is as follows: (1) the benefit is
54 received in the city; (2) delivery destination; (3) the receipts frac-
55 tion for such receipts within the city determined pursuant to this
56 subdivision for the preceding taxable year; or (4) the receipts fraction

1 in the current taxable year determined pursuant to this subdivision for
2 those receipts that can be sourced using the hierarchy of sourcing meth-
3 ods in subparagraphs one and two of this paragraph.

4 11. If it shall appear that the receipts fraction determined pursuant
5 to this section does not result in a proper reflection of the taxpayer's
6 business income or capital within the city, the commissioner of finance
7 is authorized in his or her discretion to adjust it, or the taxpayer may
8 request that the commissioner of finance adjust it, by (a) excluding one
9 or more items in such determination, (b) including one or more other
10 items in such determination, or (c) any other similar or different meth-
11 od calculated to effect a fair and proper allocation of the business
12 income and capital reasonably attributed to the city. The party seeking
13 the adjustment shall bear the burden of proof to demonstrate that the
14 receipts fraction determined pursuant to this section does not result in
15 a proper reflection of the taxpayer's business income or capital within
16 the city and that the proposed adjustment is appropriate.

17 12. Receipts from the operation of vessels shall be included in the
18 numerator of the receipts fraction as follows. The amount of receipts
19 from the operation of vessels included in the numerator of the receipts
20 fraction shall be determined by multiplying the amount of such receipts
21 by a fraction, the numerator of which shall be the aggregate number of
22 working days of the vessels owned or leased by the taxpayer in territo-
23 rial waters of the city during the period covered by the taxpayer's
24 report and the denominator of which shall be the aggregate number of
25 working days of all vessels owned or leased by the taxpayer during such
26 period. Receipts from the operation of vessels shall be included in the
27 denominator of the receipts fraction.

28 § 11-654.3 Combined reports. 1. (a) The tax on a combined report shall
29 be the highest of (1) the combined business income multiplied by the tax
30 rate specified in clause (i) of subparagraph one of paragraph (e) of
31 subdivision one of section 11-654 of this subchapter; (2) the combined
32 capital multiplied by the tax rate specified in clause (ii) of subpara-
33 graph one of paragraph (e) of subdivision one of section 11-654 of this
34 subchapter, but not exceeding the limitation provided for in such clause
35 (ii); or (3) the fixed dollar minimum that is attributable to the desig-
36 nated agent of the combined group. In addition, the tax on a combined
37 report shall include the fixed dollar minimum tax specified in clause
38 (iv) of subparagraph one of paragraph (e) of subdivision one of section
39 11-654 of this subchapter for each member of the combined group, other
40 than the designated agent, that is a taxpayer.

41 (b) The combined business income base is the amount of the combined
42 business income of the combined group that is allocated to the city,
43 reduced by any prior net operating loss conversion subtraction and any
44 net operating loss deduction for the combined group. The combined capi-
45 tal base is the amount of the combined capital of the combined group
46 that is allocated to the city.

47 2. (a) Except as provided in paragraph (c) of this subdivision, any
48 taxpayer (1) which owns or controls either directly or indirectly more
49 than fifty percent of the voting power of the capital stock of one or
50 more other corporations, or (2) more than fifty percent of the voting
51 power of the capital stock of which is owned or controlled either
52 directly or indirectly by one or more other corporations, or (3) more
53 than fifty percent of the voting power of the capital stock of which and
54 the capital stock of one or more other corporations, is owned or
55 controlled, directly or indirectly, by the same interests, and (4) that
56 is engaged in a unitary business with those corporations, hereinafter

1 referred to as "related corporations", shall make a combined report with
2 those other corporations.

3 (b) A corporation required to make a combined report within the mean-
4 ing of this section shall also include (1) a captive REIT and a captive
5 RIC; (2) a combinable captive insurance company; and (3) an alien corpo-
6 ration that satisfies the conditions in paragraph (a) of this subdivi-
7 sion if (i) under any provision of the internal revenue code, that
8 corporation is treated as a "domestic corporation" as defined in section
9 seven thousand seven hundred one of the internal revenue code, or (ii)
10 it has effectively connected income for the taxable year pursuant to
11 clause (iii) of the opening paragraph of subdivision eight of section
12 11-652 of this subchapter.

13 (c) A corporation required or permitted to make a combined report
14 under this section does not include (1) a corporation that is taxable
15 under a tax imposed by subchapter two or three of this chapter or chap-
16 ter eleven of this title, except for a vendor of utility services that
17 is taxable under both chapter eleven of this title and this subchapter,
18 or would be taxable under a tax imposed by subchapter two or three of
19 this chapter or chapter eleven of this title, except for a vendor of
20 utility services that is taxable under both chapter eleven of this title
21 and this subchapter, or would have been taxable as an insurance corpo-
22 ration under the former part IV, title R, chapter forty-six of the
23 administrative code as in effect on June thirtieth, nineteen hundred
24 seventy-four; (2) a REIT that is not a captive REIT, and a RIC that is
25 not a captive RIC; or (3) an alien corporation that under any provision
26 of the internal revenue code is not treated as a "domestic corporation"
27 as defined in section seven thousand seven hundred one of such code and
28 has no effectively connected income for the taxable year pursuant to
29 clause (iii) of the opening paragraph of subdivision eight of section
30 11-652 of this subchapter. If a corporation is subject to tax under this
31 subchapter solely as a result of its ownership of a limited partner
32 interest in a limited partnership that is doing business, employing
33 capital, owning or leasing property, or maintaining an office in this
34 city, and none of the corporation's related corporations are subject to
35 tax under this subchapter, such corporation shall not be required or
36 permitted to file a combined report under this section with such related
37 corporations.

38 (d) A combined report shall be filed by the designated agent of the
39 combined group as determined under subdivision seven of this section.

40 3. (a) Subject to the provisions of paragraph (c) of subdivision two
41 of this section, a taxpayer may elect to treat as its combined group all
42 corporations that meet the ownership requirements described in paragraph
43 (a) of subdivision two of this section, such corporations collectively
44 referred to in this subdivision as the "commonly owned group". If that
45 election is made, the commonly owned group shall calculate the combined
46 business income, combined business capital, and fixed dollar minimum
47 amount of all members of the group in accordance with paragraph four of
48 this subdivision, whether or not that business income or business capi-
49 tal is from a single unitary business.

50 (b) The election under this subdivision shall be made on an original,
51 timely filed return, determined with regard to extensions, of the
52 combined group. Any corporation entering a commonly owned group subse-
53 quent to the year of election shall be included in the combined group
54 and is considered to have waived any objection to its inclusion in the
55 combined group.

1 (c) The election shall be irrevocable, and binding for and applicable
2 to the taxable year for which it is made and for the next six taxable
3 years. The election will automatically be renewed for another seven
4 taxable years after it has been in effect for seven taxable years unless
5 it is affirmatively revoked. The revocation shall be made on an
6 original, timely filed return, determined with regard to extensions, for
7 the first taxable year after the completion of a seven year period for
8 which an election under this subdivision was in place. In the case of a
9 revocation, a new election under this subdivision shall not be permitted
10 in any of the immediately following three taxable years. In determining
11 the seven and three year periods described in this paragraph, short
12 taxable years shall not be considered or counted.

13 4. (a) In computing the tax bases for a combined report, the combined
14 group shall generally be treated as a single corporation, except as
15 otherwise provided, and subject to any regulations or guidance issued by
16 the commissioner of finance or the department of finance.

17 (b)(1) In computing combined business income, all intercorporate divi-
18 dends shall be eliminated, and all other intercorporate transactions
19 shall be deferred in a manner similar to the United States treasury
20 department regulations relating to intercompany transactions under
21 section fifteen hundred two of the internal revenue code.

22 (2) In computing combined capital, all intercorporate stockholdings,
23 intercorporate bills, intercorporate notes receivable and payable,
24 intercorporate accounts receivable and payable, and other intercorporate
25 indebtedness, shall be eliminated.

26 (c) Qualification for credits, including any limitations thereon,
27 shall be determined separately for each of the members of the combined
28 group, and shall not be determined on a combined group basis, except as
29 otherwise provided. However, the credits shall be applied against the
30 combined tax of the group. To the extent that a provision of section
31 11-654 of this subchapter, or any other applicable section of this
32 subchapter, limits a credit to the fixed dollar minimum amount
33 prescribed in clause (iv) of subparagraph one of paragraph (e) of subdivi-
34 sion one of section 11-654 of this subchapter, such fixed dollar mini-
35 mum amount shall be the fixed dollar minimum amount that is attributable
36 to the designated agent of the combined group.

37 (d)(1) A net operating loss deduction is allowed in computing the
38 combined business income base. Such deduction may reduce the tax on the
39 combined business income base to the higher of the tax on the combined
40 capital or the fixed dollar minimum amount that is attributable to the
41 designated agent of the combined group. A combined net operating loss
42 deduction is equal to the amount of combined net operating loss or loss-
43 es from one or more taxable years that are carried forward or carried
44 back to a particular taxable year. A combined net operating loss is the
45 combined business loss incurred in a particular taxable year multiplied
46 by the combined business allocation percentage for that year determined
47 as provided in subdivision five of this section.

48 (2) The combined net operating loss deduction and combined net operat-
49 ing loss are also subject to the provisions contained in paragraphs (a)
50 through (g) of subdivision three of section 11-654.1 of this subchapter.

51 (3) In the case of a corporation that files a combined report, either
52 in the year the net operating loss is incurred or in the year in which a
53 deduction is claimed on account of the loss, the combined net operating
54 loss deduction is determined as if the combined group is a single corpo-
55 ration and, to the extent possible and not otherwise inconsistent with
56 this subdivision, is subject to the same limitations that would apply

1 for federal income tax purposes under the internal revenue code and the
2 code of federal regulations as if such corporation had filed for such
3 taxable year a consolidated federal income tax return with the same
4 corporations included in the combined report. If a corporation files a
5 combined report, regardless of whether it filed a separate return or
6 consolidated return for federal income tax purposes, the net operating
7 loss and net operating loss deduction for the combined group must be
8 computed as if the corporation had filed a consolidated return for the
9 same corporations for federal income tax purposes.

10 (4) In general, any net operating loss carryover from a year in which
11 a combined report was filed shall be based on the combined net operating
12 loss of the group of corporations filing such report. The portion of the
13 combined loss attributable to any member of the group that files a sepa-
14 rate report for a succeeding taxable year will be an amount bearing the
15 same relation to the combined loss as the net operating loss of such
16 corporation bears to the total net operating loss of all members of the
17 group having such losses to the extent that they are taken into account
18 in computing the combined net operating loss.

19 (d-1) A prior net operating loss conversion subtraction is allowed in
20 computing the combined business income base, as provided in subdivisions
21 one and two of section 11-654.1 of this subchapter. Such subtraction may
22 reduce the tax on combined business income to the higher of the tax on
23 combined capital or the fixed dollar minimum amount that is attributable
24 to the designated agent of the combined group.

25 (e)(i) Any election made pursuant to paragraph (b) of subdivision
26 five, paragraphs (b) and (c) of subdivision five-a of section 11-652 of
27 this subchapter, and paragraph (g) of subdivision three of section
28 11-654.1 of this subchapter shall apply to all members of the combined
29 group.

30 (ii) The determination of whether or not the limitation on investment
31 income provided in subparagraph (iii) of paragraph (a) of subdivision
32 five of section 11-652 of this subchapter to the combined group shall be
33 based on the investment income of the combined group, determined without
34 regard to interest expenses attributable to investment capital or
35 investment income, and the entire net income of the combined group.

36 (f)(1) In the case of a captive REIT or captive RIC required under
37 this section to be included in a combined report, entire net income
38 shall be computed as required under subdivision seven, in the case of a
39 captive REIT, or subdivision eight, in the case of a captive RIC, of
40 section 11-653 of this subchapter. However, the deduction under the
41 internal revenue code for dividends paid by the captive REIT or captive
42 RIC to any member of the affiliated group that includes the corporation
43 that directly or indirectly owns over fifty percent of the voting stock
44 of the captive REIT or captive RIC shall not be allowed. For purposes of
45 this subparagraph, the term "affiliated group" means "affiliated group"
46 as defined in section fifteen hundred four of the internal revenue code,
47 but without regard to the exceptions provided for in subsection (b) of
48 that section.

49 (2) In the case of a combinable captive insurance company required
50 under this section to be included in a combined report, entire net
51 income shall be computed as required by subdivision eight of section
52 11-652 of this subchapter.

53 (g) If more than one member of a combined group is eligible for any of
54 the modifications described in paragraphs (q), (r) or (s) of subdivision
55 eight of section 11-652 of this subchapter, all such members must
56 utilize the same modification.

1 5. (a) In determining the business allocation percentage for a
2 combined report, the receipts, net income, net gains and other items of
3 each member of the combined group, whether or not they are a taxpayer,
4 are included and intercorporate receipts, income and gains are elimi-
5 nated. Receipts, net income, net gains and other items are sourced, and
6 the amounts allowed in the receipts fraction are determined, as provided
7 in section 11-654.2 of this subchapter.

8 (b) An election made to allocate income and gains from qualifying
9 financial instruments pursuant to subparagraph one of paragraph (a) of
10 subdivision five of section 11-654.2 of this subchapter shall apply to
11 all members of the combined group.

12 6. Every member of the combined group that is subject to tax under
13 this article shall be jointly and severally liable for the tax due
14 pursuant to a combined report.

15 7. Each combined group shall appoint a designated agent for the
16 combined group, which shall be a taxpayer. Only the designated agent may
17 act on behalf of the members of the combined group for matters relating
18 to the combined report.

19 § 11-655 Reports. 1. Every corporation having an officer, agent or
20 representative within the city, shall annually on or before March
21 fifteenth for taxable years beginning before January first, two thousand
22 sixteen, and annually on or before April fifteenth for taxable years
23 beginning on or after January first, two thousand sixteen, transmit to
24 the commissioner of finance a report in a form prescribed by the commis-
25 sioner of finance, setting forth such information as the commissioner of
26 finance may prescribe, except that a corporation that reports on the
27 basis of a fiscal year shall transmit such report, for taxable years
28 beginning before January first, two thousand sixteen, within two and
29 one-half months after the close of its fiscal year, and, for taxable
30 years beginning after January first, two thousand sixteen, within three
31 and one-half months after the close of its fiscal year. Every taxpayer
32 that ceases to do business in the city or to be subject to the tax
33 imposed by this subchapter shall transmit to the commissioner of finance
34 a report on the date of such cessation or at such other time as the
35 commissioner of finance may require covering each year or period for
36 which no report was theretofore filed. Every taxpayer shall also trans-
37 mit such other reports and such facts and information as the commission-
38 er of finance may require in the administration of this subchapter. The
39 commissioner of finance may grant a reasonable extension of time for
40 filing reports whenever good cause exists.

41 An automatic extension of six months for the filing of its annual
42 report shall be allowed any taxpayer if, within the time prescribed by
43 the opening paragraph of this subdivision, whichever is applicable, such
44 taxpayer files with the commissioner of finance an application for
45 extension in such form as the commissioner of finance may prescribe by
46 regulation and pays on or before the date of such filing the amount
47 properly estimated as its tax.

48 2. Every report shall have annexed thereto a certification by the
49 president, vice-president, treasurer, assistant treasurer, chief
50 accounting officer or another officer of the taxpayer duly authorized so
51 to act to the effect that the statements contained therein are true. In
52 the case of an association, within the meaning of paragraph three of
53 section (a) of section seventy-seven hundred one of the internal revenue
54 code, a publicly-traded partnership treated as a corporation for
55 purposes of the internal revenue code pursuant to section seventy-seven
56 hundred four thereof and any business conducted by a trustee or trustees

1 wherein interest or ownership is evidenced by certificates or other
2 written instruments, such certification shall be made by any person duly
3 authorized so to act on behalf of such association, publicly-traded
4 partnership or business. The fact that an individual's name is signed on
5 a certification of the report shall be prima facie evidence that such
6 individual is authorized to sign and certify the report on behalf of the
7 corporation. Blank forms of reports shall be furnished by the commis-
8 sioner of finance, on application, but failure to secure such a blank
9 shall not release any corporation from the obligation of making any
10 report required by this subchapter.

11 2-a. The commissioner of finance may prescribe regulations and
12 instructions requiring returns of information to be made and filed in
13 conjunction with the reports required to be filed pursuant to this
14 section, relating to payments made to shareholders owning, directly or
15 indirectly, individually or in the aggregate, more than fifty percent of
16 the issued capital stock of the taxpayer, where such payments are treat-
17 ed as payments of interest in the computation of entire net income
18 reported on such reports.

19 3. If the amount of taxable income or other basis of tax for any year
20 of any taxpayer as returned to the United States treasury department or
21 the New York state commissioner of taxation and finance is changed or
22 corrected by the commissioner of internal revenue or other officer of
23 the United States or the New York state commissioner of taxation and
24 finance or other competent authority, or where a renegotiation of a
25 contract or subcontract with the United States or the state of New York
26 results in a change in taxable income or other basis of tax, or where a
27 recovery of a war loss results in a computation or recomputation of any
28 tax imposed by the United States or the state of New York, or if a
29 taxpayer, pursuant to subsection (d) of section sixty-two hundred thir-
30 teen of the internal revenue code, executes a notice of waiver of the
31 restrictions provided in subsection (a) of said section, or if a taxpay-
32 er, pursuant to subsection (f) of section one thousand eighty-one of the
33 tax law, executes a notice of waiver of the restrictions provided in
34 subsection (c) of said section, such taxpayer shall report such changed
35 or corrected taxable income or other basis of tax, or the results of
36 such renegotiation, or such computation, or recomputation, or such
37 execution of such notice of waiver and the changes or corrections of the
38 taxpayer's federal or New York state taxable income or other basis of
39 tax on which it is based, within ninety days, or one hundred twenty
40 days, in the case of a taxpayer making a combined report under this
41 subchapter for such year, after such execution or the final determi-
42 nation of such change or correction or renegotiation, or such computa-
43 tion, or recomputation, or as required by the commissioner of finance,
44 and shall concede the accuracy of such determination or state wherein it
45 is erroneous. The allowance of a tentative carryback adjustment based
46 upon a net operating loss carryback or net capital loss carryback pursu-
47 ant to section sixty-four hundred eleven of the internal revenue code
48 shall be treated as a final determination for purposes of this subdivi-
49 sion. Any taxpayer filing an amended return with such department shall
50 also file within ninety days, or one hundred twenty days, in the case of
51 a taxpayer making a combined report under this subchapter for such year,
52 thereafter an amended report with the commissioner of finance.

53 4. The provisions of section 11-654.3 of this subchapter shall apply
54 to combined reports.

55 5. In case it shall appear to the commissioner of finance that any
56 agreement, understanding or arrangement exists between the taxpayer and

1 any other corporation or any person or firm, whereby the activity, busi-
2 ness, income or capital of the taxpayer within the city is improperly or
3 inaccurately reflected, the commissioner of finance is authorized and
4 empowered, in its discretion and in such manner as it may determine, to
5 adjust items of income, deductions and capital, and to eliminate assets
6 in computing any allocation percentage provided only that any income
7 directly traceable thereto be also excluded from entire net income, so
8 as equitably to determine the tax. Where (a) any taxpayer conducts its
9 activity or business under any agreement, arrangement or understanding
10 in such manner as either directly or indirectly to benefit its members
11 or stockholders, or any of them, or any person or persons directly or
12 indirectly interested in such activity or business, by entering into any
13 transaction at more or less than a fair price which, but for such agree-
14 ment, arrangement or understanding, might have been paid or received
15 therefor, or (b) any taxpayer, a substantial portion of whose capital
16 stock is owned either directly or indirectly by another corporation,
17 enters into any transaction with such other corporation on such terms as
18 to create an improper loss or net income, the commissioner of finance
19 may include in the entire net income of the taxpayer the fair profits,
20 which, but for such agreement, arrangement or understanding, the taxpay-
21 er might have derived from such transaction. Where any taxpayer owns,
22 directly or indirectly, more than fifty percent of the capital stock of
23 another corporation subject to tax under section fifteen hundred two-a
24 of the tax law and fifty percent or less of whose gross receipts for the
25 taxable year consist of premiums, the commissioner of finance may
26 include in the entire net income of the taxpayer, as a deemed distrib-
27 ution, the amount of the net income of the other corporation that is in
28 excess of its net premium income.

29 6. An action may be brought at any time by the corporation counsel at
30 the instance of the commissioner of finance to compel the filing of
31 reports due under this subchapter.

32 7. Reports shall be preserved for five years, and thereafter until the
33 commissioner of finance orders them to be destroyed.

34 8. Where the New York state commissioner of taxation and finance
35 changes or corrects a taxpayer's sales and compensating use tax liabil-
36 ity with respect to the purchase or use of items for which a sales or
37 compensating use tax credit against the tax imposed by this subchapter
38 was claimed, the taxpayer shall report such change or correction to the
39 commissioner of finance within ninety days of the final determination of
40 such change or correction, or as required by the commissioner of
41 finance, and shall concede the accuracy of such determination or state
42 wherein it is erroneous. Any taxpayer filing an amended return or report
43 relating to the purchase or use of such items shall also file within
44 ninety days thereafter a copy of such amended return or report with the
45 commissioner of finance.

46 § 11-656 Payment and lien of tax. 1. To the extent the tax imposed by
47 section 11-653 of this subchapter shall not have been previously paid
48 pursuant to section 11-658 of this subchapter:

49 (a) such tax, or the balance thereof, shall be payable to the commis-
50 sioner of finance in full at the time the report is required to be
51 filed; and

52 (b) such tax, or the balance thereof, imposed on any taxpayer which
53 ceases to do business in the city or to be subject to the tax imposed by
54 this subchapter shall be payable to the commissioner of finance at the
55 time the report is required to be filed; all other taxes of any such
56 taxpayer, which pursuant to the this subdivision would otherwise be

1 payable subsequent to the time such report is required to be filed,
2 shall nevertheless be payable at such time. If the taxpayer, within the
3 time prescribed by section 11-655 of this subchapter, shall have applied
4 for an automatic extension of time to file its annual report and shall
5 have paid to the commissioner of finance on or before the date such
6 application is filed an amount properly estimated as provided by said
7 section, the only amount payable in addition to the tax shall be inter-
8 est at the underpayment rate set by the commissioner of finance pursuant
9 to section 11-687 of this chapter, or, if no rate is set, at the rate of
10 seven and one-half percent per annum upon the amount by which the tax,
11 or the portion thereof payable on or before the date the report was
12 required to be filed, exceeds the amount so paid, provided that:

13 (1) an amount so paid shall be deemed properly estimated if it is
14 either: (i) not less than ninety percent of the tax as finally deter-
15 mined, or (ii) not less than the tax shown on the taxpayer's report for
16 the preceding taxable year, if such preceding year was a taxable year of
17 twelve months; and

18 (2) the time when a report is required to be filed shall be determined
19 without regard to any extension of time for filing such report.

20 2. The commissioner of finance may grant a reasonable extension of
21 time for payment of any tax imposed by this subchapter under such condi-
22 tions as the commissioner of finance deems just and proper.

23 3. Intentionally omitted.

24 § 11-657 Declaration of estimated tax. 1. Every taxpayer subject to
25 the tax imposed by section 11-653 of this subchapter shall make a decla-
26 ration of its estimated tax for the current privilege period, containing
27 such information as the commissioner of finance may prescribe by regu-
28 lations or instructions, if such estimated tax can reasonably be
29 expected to exceed one thousand dollars.

30 2. The term "estimated tax" means the amount which a taxpayer esti-
31 mates to be the tax imposed by section 11-653 of this subchapter for the
32 current privilege period, less the amount which it estimates to be the
33 sum of any credits allowable against the tax.

34 3. In the case of a taxpayer which reports on the basis of a calendar
35 year, a declaration of estimated tax shall be filed on or before June
36 fifteenth of the current privilege period, except that if the require-
37 ments of subdivision one of this section are first met:

38 (a) after May thirty-first and before September first of such current
39 privilege period, the declaration shall be filed on or before September
40 fifteenth; or

41 (b) after August thirty-first and before December first of such
42 current privilege period, the declaration shall be filed on or before
43 December fifteenth.

44 4. A taxpayer may amend a declaration under regulations of the commis-
45 sioner of finance.

46 5. If, on or before February fifteenth of the succeeding year in the
47 case of a taxpayer which reports on the basis of a calendar year, a
48 taxpayer files its report for the year for which the declaration is
49 required, and pays therewith the balance, if any, of the full amount of
50 the tax shown to be due on the report:

51 (a) such report shall be considered as its declaration if no declara-
52 tion is required to be filed during the calendar or fiscal year for
53 which the tax was imposed, but is otherwise required to be filed on or
54 before December fifteenth pursuant to subdivision three of this section;
55 and

1 (b) such report shall be considered as the amendment permitted by
2 subdivision four of this section to be filed on or before December
3 fifteenth if the tax shown on the report is greater than the estimated
4 tax shown on a declaration previously made.

5 6. This section shall apply to privilege periods of twelve months
6 other than a calendar year by the substitution of the months of such
7 fiscal year for the corresponding months specified in this section.

8 7. If the privilege period for which a tax is imposed by section
9 11-653 of this subchapter is less than twelve months, every taxpayer
10 required to make a declaration of estimated tax for such privilege peri-
11 od shall make such a declaration in accordance with regulations of the
12 commissioner of finance.

13 8. The commissioner of finance may grant a reasonable extension of
14 time, not to exceed three months, for the filing of any declaration
15 required pursuant to this section, on such terms and conditions as it
16 may require.

17 § 11-658 Payments on account of estimated tax. 1. For taxable years
18 beginning before January first, two thousand sixteen, every taxpayer
19 subject to the tax imposed by section 11-653 of this subchapter shall
20 pay with the report required to be filed for the preceding privilege
21 period, if any, or with an application for extension of the time and
22 filing such report, an amount equal to twenty-five per centum of the
23 preceding year's tax if such preceding year's tax exceeded one thousand
24 dollars. For taxable years beginning on or after January first, two
25 thousand sixteen, every taxpayer subject to the tax imposed by section
26 11-653 of this subchapter shall pay on or before the fifteenth day of
27 March next succeeding the close of each such calendar year, or, in the
28 case of a taxpayer that reports on the basis of a fiscal year, within
29 two and one-half months after the close of each such fiscal year an
30 amount equal to twenty-five per centum of the second preceding year's
31 tax if the second preceding year's tax exceeded one thousand dollars.

32 2. The estimated tax with respect to which a declaration for such
33 privilege period is required shall be paid, in the case of a taxpayer
34 which reports on the basis of a calendar year, as follows:

35 (a) If the declaration is filed on or before June fifteenth, the esti-
36 mated tax shown thereon, after applying thereto the amount, if any, paid
37 during the same privilege period pursuant to subdivision one of this
38 section, shall be paid in three equal installments. One of such install-
39 ments shall be paid at the time of the filing of the declaration, one
40 shall be paid on the following September fifteenth, and one on the
41 following December fifteenth.

42 (b) If the declaration is filed after June fifteenth and not after
43 September fifteenth of such privilege period, and is not required to be
44 filed on or before June fifteenth of such period, the estimated tax
45 shown on such declaration, after applying thereto the amount, if any,
46 paid during the same privilege period pursuant to subdivision one of
47 this section, shall be paid in two equal installments. One of such
48 installments shall be paid at the time of the filing of the declaration
49 and one shall be paid on the following December fifteenth.

50 (c) If the declaration is filed after September fifteenth of such
51 privilege period, and is not required to be filed on or before September
52 fifteenth of such privilege period, the estimated tax shown on such
53 declaration, after applying thereto the amount, if any, paid in respect
54 to such privilege period pursuant to subdivision one of this section,
55 shall be paid in full at the time of the filing of the declaration.

1 (d) If the declaration is filed after the time prescribed therefor, or
2 after the expiration of any extension of time therefor, paragraphs (b)
3 and (c) of this subdivision shall not apply, and there shall be paid at
4 the time of such filing all installments of estimated tax payable at or
5 before such time, and the remaining installments shall be paid at the
6 times at which, and in the amounts in which, they would have been paya-
7 ble if the declaration had been filed when due.

8 3. If any amendment of a declaration is filed, the remaining install-
9 ments, if any, shall be ratably increased or decreased, as the case may
10 be, to reflect any increase or decrease in the estimated tax by reason
11 of such amendment, and if any amendment is made after September
12 fifteenth of the privilege period, any increase in the estimated tax by
13 reason thereof shall be paid at the time of making such amendment.

14 4. Any amount paid shall be applied after payment as a first install-
15 ment against the estimated tax of the taxpayer for the current privilege
16 period shown on the declaration required to be filed pursuant to section
17 11-657 of this subchapter or, if no declaration of estimated tax is
18 required to be filed by the taxpayer pursuant to such section, any such
19 amount shall be considered a payment on account of the tax shown on the
20 report required to be filed by the taxpayer for such privilege period.

21 5. Notwithstanding the provisions of section 11-679 of this chapter or
22 of section three-a of the general municipal law, if an amount paid
23 pursuant to subdivision one of this section exceeds the tax shown on the
24 report required to be filed by the taxpayer for the privilege period
25 during which the amount was paid, interest shall be allowed and paid on
26 the amount by which the amount so paid pursuant to such subdivision
27 exceeds such tax, at the overpayment rate set by the commissioner of
28 finance pursuant to section 11-687 of this chapter, or, if no rate is
29 set, at the rate of four percent per annum from the date of payment of
30 the amount so paid pursuant to such subdivision to the fifteenth day of
31 the third month following the close of the privilege period, provided,
32 however, that no interest shall be allowed or paid under this subdivi-
33 sion if the amount thereof is less than one dollar or if such interest
34 becomes payable solely because of a carryback of a net operating loss in
35 a subsequent privilege period.

36 6. As used in this section, "the preceding year's tax" means the tax
37 imposed upon the taxpayer by section 11-653 of this subchapter for the
38 preceding calendar or fiscal year, or, for purposes of computing the
39 first installment of estimated tax when either the mandatory first
40 installment is paid pursuant to subdivision one of this section or an
41 application has been filed for extension of the time for filing the
42 report required to be filed for such preceding calendar or fiscal year,
43 the amount properly estimated pursuant to section 11-657 of this
44 subchapter as the tax imposed upon the taxpayer for such calendar or
45 fiscal year. As used in this section, "the second preceding year's tax"
46 means the tax imposed upon the taxpayer by section 11-653 of this
47 subchapter for the second preceding calendar of fiscal year.

48 7. This section shall apply to a privilege period of less than twelve
49 months in accordance with regulations of the commissioner of finance.

50 8. The provisions of this section shall apply to privilege periods of
51 twelve months other than a calendar year by the substitution of the
52 months of such fiscal year for the corresponding months specified in
53 such provisions.

54 9. The commissioner of finance may grant a reasonable extension of
55 time, not to exceed six months, for payment of any installment of esti-
56 mated tax required pursuant to this section, on such terms and condi-

1 tions as the commissioner of finance may require including the furnish-
2 ing of a bond or other security by the taxpayer in an amount not
3 exceeding twice the amount for which any extension of time for payment
4 is granted, provided, however, that interest at the underpayment rate
5 set by the commissioner of finance pursuant to section 11-687 of this
6 subchapter, or, if no rate is set, at the rate of seven and one-half
7 percent per annum for the period of the extension shall be charged and
8 collected on the amount for which any extension of time for payment is
9 granted under this subdivision.

10 10. A taxpayer may elect to pay any installment of estimated tax prior
11 to the date prescribed in this section for payment thereof.

12 11. Intentionally omitted.

13 § 11-659 Collection of taxes. Every foreign corporation, other than a
14 moneyed corporation, subject to the provisions of this subchapter,
15 except a corporation having authority to do business by virtue of
16 section thirteen hundred five of the business corporation law, shall
17 file in the department of state a certificate of designation in its
18 corporate name, signed and acknowledged by its president or a vice-pre-
19 sident or its secretary or treasurer, under its corporate seal, desig-
20 nating the secretary of state as its agent upon whom process in any
21 action provided for by this subchapter may be served within this state,
22 and setting forth an address to which the secretary of state shall mail
23 a copy of any such process against the corporation which may be served
24 upon the secretary of state. In case any such corporation shall have
25 failed to file such certificate of designation, it shall be deemed to
26 have designated the secretary of state as its agent upon whom such proc-
27 ess against it may be served; and until a certificate of designation
28 shall have been filed the corporation shall be deemed to have directed
29 the secretary of state to mail copies of process served upon him or her
30 to the corporation at its last known office address within or without
31 the state. When a certificate of designation has been filed by such
32 corporation the secretary of state shall mail copies of process there-
33 after served upon the secretary of state to the address set forth in
34 such certificate. Any such corporation, from time to time, may change
35 the address to which the secretary of state is directed to mail copies
36 of process, by filing a certificate to that effect executed, signed and
37 acknowledged in like manner as a certificate of designation as herein
38 provided. Service of process upon any such corporation or upon any
39 corporation having a certificate of authority under section eight
40 hundred five of the limited liability company law or having authority to
41 do business by virtue of section thirteen hundred five of the business
42 corporation law, in any action commenced at any time pursuant to the
43 provisions of this subchapter, may be made by either: (a) personally
44 delivering to and leaving with the secretary of state, a deputy secre-
45 tary of state or with any person authorized by the secretary of state to
46 receive such service duplicate copies thereof at the office of the
47 department of state in the city of Albany, in which event the secretary
48 of state shall forthwith send by registered mail, return receipt
49 requested, one of such copies to the corporation at the address desig-
50 nated by it or at its last known office address within or without the
51 state, or (b) personally delivering to and leaving with the secretary of
52 state, a deputy secretary of state or with any person authorized by the
53 secretary of state to receive such service, a copy thereof at the office
54 of the department of state in the city of Albany and by delivering a
55 copy thereof to, and leaving such copy with, the president, vice-presi-
56 dent, secretary, assistant secretary, treasurer, assistant treasurer, or

1 cashier of such corporation, or the officer performing corresponding
2 functions under another name, or a director or managing agent of such
3 corporation, personally without the state. Proof of such personal
4 service without the state shall be filed with the clerk of the court in
5 which the action is pending within thirty days after such service, and
6 such service shall be complete ten days after proof thereof is filed.

7 § 11-660 Limitations of time. The provisions of the civil practice law
8 and rules relative to the limitation of time enforcing a civil remedy
9 shall not apply to any proceeding or action taken to levy, appraise,
10 assess, determine or enforce the collection of any tax or penalty
11 prescribed by this subchapter, provided, however, that as to real estate
12 in the hands of persons who are owners thereof who would be purchasers
13 in good faith but for such tax or penalty and as to the lien on real
14 estate of mortgages held by persons who would be holders thereof in good
15 faith but for such tax or penalty, all such taxes and penalties shall
16 cease to be a lien on such real estate as against such purchasers or
17 holders after the expiration of ten years from the date such taxes
18 became due and payable. The limitations herein provided for shall not
19 apply to any transfer from a corporation to a person or corporation with
20 intent to avoid payment of any taxes, or where with like intent the
21 transfer is made to a grantee corporation, or any subsequent grantee
22 corporation, controlled by such grantor or which has any community of
23 interest with it, either through stock ownership or otherwise.

24 SUBCHAPTER 4

25 TRANSPORTATION CORPORATION TAX

26 § 11-662 Tax on transportation corporations and associations. 1.
27 The term "corporation" as used in this subchapter shall include any
28 business conducted by a trustee or trustees wherein interest or owner-
29 ship is evidenced by certificates or other written instruments.

30 2. For the privilege of doing business or holding property in the
31 city every corporation, joint-stock company or association formed for or
32 principally engaged in the conduct of aviation, steamboat, ferry, except
33 a ferry company operating between the city of Staten Island and any of
34 the boroughs of the city of New York under a lease granted by the city
35 of New York, or navigation business, or formed for or principally
36 engaged in the conduct of two or more of such businesses, except a
37 corporation, joint-stock company or association subject to taxation
38 under chapter eleven of this title, shall pay, in advance, an annual tax
39 to be computed upon the basis of the amount of its capital stock within
40 the city during the preceding year, and upon each dollar of such amount.

41 3. The measure of the amount of capital stock in the city, except as
42 hereinafter provided, shall be such a portion of the issued capital
43 stock as the gross assets, exclusive of obligations issued by the United
44 States and cash on hand and on deposit, employed in any business within
45 the city, bear to the gross assets, exclusive of obligations issued by
46 the United States and cash on hand and on deposit, wherever employed in
47 business. Provided, however, that in the case of a corporation taxable
48 hereunder only for the privilege of holding property, the measure shall
49 be such a portion of the issued capital stock as the gross assets,
50 exclusive of obligations issued by the United States and cash on hand
51 and on deposit, located within the city, bear to the gross assets,
52 exclusive of obligations issued by the United States and cash on hand
53 and on deposit, wherever located. The capital of a corporation invested
54 in the stock of another corporation shall be deemed to be assets located

1 where the assets of the issuing corporation, other than patents, copy-
2 rights, trademarks, contracts and good will, are located.

3 4. Every corporation, joint-stock company or association subject to
4 taxation under this section shall, in any event, pay annually, for taxa-
5 ble years ending on or before December thirty-first, nineteen hundred
6 seventy-four, a minimum tax of not less than ten dollars nor less than
7 one mill, and for taxable years beginning on or after January first,
8 nineteen hundred seventy-five, a minimum tax of not less than fifteen
9 dollars nor less than one and one-half mills, on each dollar of such a
10 portion of the net value of its issued capital stock, which net value
11 for the purposes of this section shall be deemed to be not less than
12 five dollars per share, as may be determined upon such of the bases
13 herein provided for the measurement thereof as is applicable. The term
14 "net value" as used in this section shall be construed to mean not less
15 than the difference between a corporation's assets and liabilities, and
16 not less than the average price at which such stock sold during the year
17 covered by the report which forms the basis for the tax. But if the
18 dividends paid on the par value of any kind of capital stock during any
19 year ending with the thirty-first day of December amounts to six or more
20 than six per centum, the tax upon such kind of capital stock shall be at
21 the rate of one-quarter of a mill for taxable years ending on or before
22 December thirty-first, nineteen hundred seventy-four, and at the rate of
23 four-tenths of a mill for taxable years beginning on or after January
24 first, nineteen hundred seventy-five for each one per centum of divi-
25 dends paid and shall be computed upon the par value of such capital
26 stock, unless such a tax be less than the minimum tax hereinbefore
27 provided in this section and the commissioner of finance shall, for such
28 purpose, make a fair and equitable apportionment of the assets of the
29 corporation, joint-stock company or association, between or among the
30 different kinds of stock.

31 5. If such corporation, joint-stock company or association shall have
32 more than one kind of capital stock, and upon one of such kinds of stock
33 a dividend or dividends amounting to six or more than six per centum
34 upon the par value thereof, has been paid, and upon the other no divi-
35 dend has been paid, or the dividend or dividends paid thereon amount to
36 less than six per centum upon the par value thereof, then the tax shall
37 be fixed upon each kind as hereinbefore provided.

38 6. The dividend rate for a corporation having stock without nominal or
39 par value shall be determined by dividing the amount paid as a dividend
40 or dividends during the year by the amount paid in on such stock and, if
41 the rate is six per centum or more, then for taxable years ending on or
42 before December thirty-first, nineteen hundred seventy-four, the rate of
43 one-quarter of a mill for each one per centum of dividends shall be
44 applied to the amount paid in on such stock, and for taxable years
45 beginning on or after January first, nineteen hundred seventy-five, the
46 rate of four-tenths of a mill for each one per centum of dividends shall
47 be applied to the amount paid in on such stock, unless such tax be less
48 than the minimum tax hereinbefore in this section provided for. Any
49 consideration given by a corporation for the purchase of its own stock
50 in excess of the consideration received by it for the issuance of such
51 stock shall for the purposes of this section, be considered as a divi-
52 dend.

53 7. The owning or holding in the city by any corporation of property,
54 other than property exclusively in interstate or foreign commerce, shall
55 constitute carrying on business within the city within the intent of
56 this section, except that a corporation having no property in the city

1 other than a bank balance or stocks or bonds, or one or more of such
2 kinds of property, either held for safe keeping or pledged as collateral
3 security shall not be taxable under this section, and further provided
4 that any corporation having only office furniture or fixtures, a bank
5 balance, and stocks or bonds pledged as collateral security or merely
6 deposited for safe keeping, shall not be taxable under this section.

7 8. The measure of the amount of capital stock in the city of an
8 aviation corporation shall be a portion of the issued capital stock
9 determined by applying thereto the arithmetical average of the following
10 three ratios: (a) the ratio which the aircraft arrivals and departures
11 within the city scheduled by any such corporation during the preceding
12 calendar year bear to the total aircraft arrivals and departures within
13 and without the city scheduled by it during the same period, provided
14 that in the case of non-scheduled operations all arrivals and departures
15 shall be substituted for scheduled arrivals and departures; (b) the
16 ratio which the revenue tons handled by such corporation at airports
17 within the city during the preceding calendar year bear to the total
18 revenue tons handled by it at airports within and without the city
19 during the same period; and (c) the ratio which such corporation's orig-
20 inating revenue within the city for the preceding calendar years bears
21 to its total originating revenue within and without the city for the
22 same period. As used in this section, the term "aircraft arrivals and
23 departures" means the number of scheduled landings and takeoffs of the
24 aircraft of an aviation corporation, and the number of scheduled air
25 pickups and deliveries by the aircraft of such corporation, and in the
26 case of non-scheduled operations shall include all landings and
27 takeoffs, pickups and deliveries; the term "originating revenue" means
28 revenue to any such corporation from the transportation of revenue
29 passengers and revenue property first received by such corporation
30 either as originating or connecting traffic at airports; and the term
31 "revenue tons handled" by any such corporation at an airport means the
32 weight in tons of revenue passengers, at two hundred pounds per passen-
33 ger, and revenue cargo first received either as originating or connect-
34 ing traffic or finally discharged by such corporation at such airport.

35 9. The measure of the capital stock in the city of a corporation
36 engaged in the operation of vessels in foreign commerce shall be such
37 portion of the issued capital stock as the aggregate number of working
38 days in territorial waters of the city of all such vessels bears to the
39 aggregate number of working days of all such vessels. The dividend rate
40 for such a corporation shall be determined by dividing the amount paid
41 as a dividend or dividends on all classes of stock during the year by
42 the amount of paid-in capital and, if the rate is six per centum or
43 more, then for taxable years ending on or before December thirty-first,
44 nineteen hundred seventy-four, the rate of one-quarter of a mill for
45 each one per centum of dividends shall be applied to the amount of such
46 paid-in capital, and for taxable years beginning on or after January
47 first, nineteen hundred seventy-five, the rate of four-tenths of a mill
48 for each one per centum of dividends shall be applied to the amount of
49 such paid-in capital.

50 § 11-663 Additional tax on transportation corporations and associ-
51 ations. Every corporation, joint-stock company or association formed
52 for or principally engaged in the conduct of aviation, steamboat, ferry,
53 except a ferry company operating between the city of Staten Island and
54 any of the boroughs of the city of New York under a lease granted by the
55 city of New York, or navigation business or formed for or principally
56 engaged in the conduct of two or more of such businesses, except a

1 corporation, joint-stock company or association subject to taxation
2 under chapter eleven of this title, shall pay for the privilege of
3 carrying on its business in the city, a tax which shall be equal to
4 five-tenths of one per centum for taxable years ending on or before
5 December thirty-first, nineteen hundred seventy-four, and seventy-five
6 hundredths of one per centum for taxable years beginning on or after
7 January first, nineteen hundred seventy-five upon its gross earnings
8 from all sources within the city, excluding earnings derived from busi-
9 ness of a character other than wholly intra-city. Provided, however,
10 gross earnings from transportation business both originating and termi-
11 nating within the city and traversing both the city and any other city,
12 any state or states or any country shall be subject to the tax imposed
13 by this section and such earnings shall be allocated to the city in the
14 same ratio that the mileage within the city bears to the total mileage
15 of such business.

16 § 11-664 Receivers, etc., conducting corporate business. Any receiv-
17 er, liquidator, referee, trustee, assignee, or other fiduciary or offi-
18 cer or agent appointed by any court, who conducts the business of any
19 corporation, joint-stock company or association shall be subject to the
20 tax or taxes imposed by this subchapter in the same manner and to the
21 same extent as if the business were conducted by the agents or officers
22 of such corporation, joint-stock company or association. A dissolved
23 corporation, joint-stock company or association which continues to
24 conduct business shall also be subjected to the tax imposed by this
25 subchapter.

26 § 11-665 Service of process; limitation of time. 1. Every foreign
27 corporation, other than a moneyed corporation, subject to the provisions
28 of this subchapter, except a corporation having authority to do business
29 by virtue of section thirteen hundred five of the business corporation
30 law, shall file in the department of state a certificate of designation
31 in its corporate name, signed and acknowledged by its president or vice-
32 president or its secretary or treasurer, under its corporate seal,
33 designating the secretary of state as its agent upon whom process in any
34 action provided for by this subchapter or subchapter five of this chap-
35 ter may be served within this state, and setting forth an address to
36 which the secretary of state shall mail a copy of any such process
37 against the corporation which may be served upon the secretary of state.
38 In case any such corporation shall have failed to file such certificate
39 of designation, it shall be deemed to have designated the secretary of
40 state as its agent upon whom such process against it may be served; and
41 until a certificate of designation shall have been filed the corporation
42 shall be deemed to have directed the secretary of state to mail copies
43 of process served upon the secretary of state to the corporation at its
44 last known office address within or without the state. When a certif-
45 icate of designation has been filed by such corporation the secretary of
46 state shall mail copies of process thereafter served upon the secretary
47 of state to the address set forth in such certificate. Any such corpo-
48 ration, from time to time, may change the address to which the secretary
49 of state is directed to mail copies of process, by filing a certificate
50 to that effect executed, signed and acknowledged in like manner as a
51 certificate of designation as herein provided. Service of process upon
52 any such corporation or upon any corporation having authority to do
53 business by virtue of section thirteen hundred five of the business
54 corporation law, in any action commenced at any time pursuant to the
55 provisions of this subchapter or subchapter five of this chapter may be
56 made by either: (1) personally delivering to and leaving with the secre-

1 tary of state, a deputy secretary of state or with any person authorized
2 by the secretary of state to receive such service duplicate copies ther-
3 eof at the office of the department of state in the city of Albany, in
4 which event the secretary of state shall forthwith send by registered
5 mail, return receipt requested, one of such copies to the corporation at
6 the address designated by it or at its last known office address within
7 or without the state, or (2) personally delivering to and leaving with
8 the secretary of state, a deputy secretary of state or with any person
9 authorized by the secretary of state to receive such service, a copy
10 thereof at the office of the department of state in the city of Albany
11 and by delivering a copy hereof to, and leaving such copy with, the
12 president, vice-president, secretary, assistant secretary, treasurer,
13 assistant treasurer, or cashier of such corporation, or the officer
14 performing corresponding functions under another name, or a director or
15 managing agent of such corporation, personally without the state. Proof
16 of such personal service without the state shall be filed with the clerk
17 of the court in which the action is pending within thirty days after
18 such service, and such service shall be complete ten days after proof
19 thereof is filed.

20 2. The provisions of the civil practice law and rules relative to the
21 limitation of time of enforcing a civil remedy shall not apply to any
22 proceeding or action taken to levy, appraise, assess, determine or
23 enforce the collection of any tax or penalty prescribed by this subchap-
24 ter or subchapter five of this chapter, provided, however, that as to
25 real estate in the hands of persons who are owners thereof who would be
26 purchasers in good faith but for such tax or penalty and as to the lien
27 on real estate of mortgages held by persons who would be holders thereof
28 in good faith but for such tax or penalty, all such taxes and penalties
29 shall cease to be a lien on such real estate as against such purchasers
30 or holders after the expiration of ten years from the date such taxes
31 become due and payable. The limitations provided for in this subdivi-
32 sion shall not apply to any transfer from a corporation to a person or
33 corporation with intent to avoid payment of any taxes, or where with
34 like intent the transfer is made to a grantee corporation, or any subse-
35 quent grantee corporation controlled by such grantor or which has any
36 community of interest with it, either through stock ownership or other-
37 wise.

38 § 11-666 Exemption of corporations owned by a municipality. The
39 provisions of this subchapter shall not apply to any corporation all of
40 the capital stock of which is owned by a municipal corporation of this
41 state.

42 § 11-667 Reports of corporations. Corporations liable to pay a tax
43 under this subchapter shall report as follows:

44 1. Every corporation, association or joint-stock company liable to pay
45 a tax under section 11-662 of this subchapter shall, on or before March
46 first in each year, make a written report to the commissioner of finance
47 of its condition at the close of its business on the preceding December
48 thirty-first, stating the amount of its authorized capital stock, the
49 amount of stock paid-in, the date and rate per centum of each dividend
50 paid by it during the year ending with such day, the entire amount of
51 the capital of such corporation, and the capital employed by it in the
52 city during such year.

53 2. Every corporation, joint-stock company or association liable to pay
54 an additional tax under section 11-663 of this subchapter shall also, on
55 or before February fifteenth, May fifteenth, August fifteenth and Novem-
56 ber fifteenth in each year, make a written report to the commissioner of

1 finance of the amount of its gross earnings subject to the tax imposed
2 by said section for the quarter year ended on the last day of the second
3 month preceding that in which the report is required to be filed. Any
4 such corporation, joint-stock company or association which ceases to be
5 subject to the tax imposed by section 11-663 of this subchapter by
6 reason of a liquidation, dissolution, merger or consolidation with any
7 other corporation, or any other cause, shall, on the date of such cessa-
8 tion or at such other time as the commissioner of finance may require,
9 make a written report to the commissioner of finance of the amount of
10 its gross earnings subject to the tax imposed by section 11-663 of this
11 subchapter for any period for which no report was therefor filed.

12 3. The commissioner of finance may for good cause shown extend the
13 time within which any corporation is required to report by this subchap-
14 ter.

15 4. Every report required by this subchapter shall have annexed thereto
16 a certification by the president, vice-president, treasurer, assistant
17 treasurer, or chief accounting officer or any other officer of the
18 corporation, association or joint-stock company duly authorized so to
19 act, or of the person or one of the persons, or the members of the part-
20 nership making the same, to the effect that the statements contained
21 therein are true. The fact that an individual's name is signed on a
22 certification attached to a corporate report shall be prima facie
23 evidence that such individual is authorized to certify the report on
24 behalf of the corporation. Such reports shall contain any other data,
25 information or matter which the commissioner of finance may require to
26 be included therein, and it may prescribe the form in which such reports
27 shall be made. When so prescribed such forms shall be used in making
28 the report. The commissioner of finance may require at any time a
29 further or supplemental report under this subchapter which shall contain
30 information and data upon such matters as the commissioner of finance
31 may specify. Reports shall be preserved for five years, and thereafter
32 until the commissioner of finance orders them to be destroyed.

33 § 11-668 Payment of tax and penalties. 1. The taxes imposed by
34 sections 11-662 and 11-663 of this subchapter shall be due and payable
35 at the time of the filing of the report required by section 11-667 of
36 this subchapter or, in case such a report is not filed when due, on the
37 last day specified for the filing thereof, except that the tax upon
38 dividends imposed by section 11-663 of this subchapter shall be due and
39 payable at the time of filing the report for the period ending June
40 thirtieth, or, in case such report is not filed when due, on the last
41 day specified for the filing thereof.

42 2. Where an application for consent to dissolution, as provided by
43 section one thousand four of the business corporation law, is filed with
44 the commissioner of finance prior to the commencement of any tax year or
45 period by a corporation subject to tax under this subchapter, such
46 corporation shall not be liable for any tax imposed by this subchapter
47 for such following year or period, except as may be otherwise provided
48 in section 11-664 of this subchapter, provided that the certificate of
49 dissolution for such corporation is duly filed in the office of the
50 secretary of state within twenty days after the filing of such applica-
51 tion.

52 3. Notwithstanding any other provision of this subchapter, the commis-
53 sioner of finance may grant a reasonable extension of time for payment
54 of any tax imposed by this subchapter under such conditions as the
55 commissioner deems just and proper.

1 § 11-669 Taxable years to which taxes apply. The taxes imposed by
2 this subchapter are imposed for each taxable year or period beginning
3 with taxable years or periods ending in or with the calendar year nine-
4 teen hundred sixty-six, provided, however, no tax shall be imposed
5 pursuant to this subchapter for any taxable year or period ending after
6 December thirty-first, nineteen hundred eighty-eight.

7 § 11-670 First reports for payments for nineteen hundred sixty-six.
8 If any report under this subchapter is due prior to September eleventh,
9 nineteen hundred sixty-six, such report and the payments therewith shall
10 be filed and paid by such date.

11 SUBCHAPTER 5

12 CORPORATE TAX PROCEDURE AND ADMINISTRATION

13 § 11-671 Application of subchapter. 1. General. The provisions of
14 this subchapter shall apply to the administration of and the procedures
15 with respect to the taxes imposed by subchapters two, three, three-A and
16 four of this chapter.

17 2. Definitions. As used in this subchapter: (a) the term "named
18 subchapters" means subchapters two, three, three-A and four of this
19 chapter;

20 (b) The term "return" means a report or return of tax, but does not
21 include a declaration of estimated tax;

22 (c) The term "corporation" includes a corporation, association, joint-
23 stock company or other entity subject to tax under any of the named
24 subchapters; and

25 (d) The term "person" includes a corporation, association, company,
26 partnership, estate, trust, liquidator, fiduciary or other entity or
27 individual liable for the tax imposed by any of the named subchapters or
28 under a duty to perform an act under any of the named subchapters. Upon
29 notice to the commissioner of finance that any person is acting for any
30 corporation in a fiduciary capacity, such fiduciary shall assume the
31 powers, rights, duties and privileges of such corporation in respect of
32 a tax imposed by any of the named subchapters, except as otherwise
33 specifically provided and except that the tax shall be collected from
34 the estate or other assets of such corporation in the hands of such
35 fiduciary, until notice is given that the fiduciary capacity has termi-
36 nated.

37 § 11-672 Notice of deficiency. 1. General. If upon examination of a
38 taxpayer's return, the commissioner of finance determines that there is
39 a deficiency of tax, the commissioner may mail a notice of deficiency to
40 the taxpayer. If a taxpayer fails to file a tax return, the commissioner
41 of finance is authorized to estimate the taxpayer's city tax liability
42 from any information in the commissioner's possession, and to mail a
43 notice of deficiency to the taxpayer. A notice of deficiency shall be
44 mailed by certified or registered mail to the taxpayer, at its last
45 known address in or out of the city. If the taxpayer has terminated its
46 existence, a notice of deficiency may be mailed to its last known
47 address in or out of the city, and such notice shall be sufficient for
48 purposes of this subchapter. If the commissioner of finance has received
49 notice that a person is acting for the taxpayer in a fiduciary capacity,
50 a copy of such notice shall also be mailed to the fiduciary named in
51 such notice.

52 2. Notice of deficiency as assessment. After ninety days from the
53 mailing of a notice of deficiency or, if the commissioner of finance has
54 established a conciliation procedure pursuant to section 11-124 of this

1 title and the taxpayer has requested a conciliation conference in
2 accordance therewith, after ninety days from the mailing of the concil-
3 iation decision or the date of the commissioner's confirmation of the
4 discontinuance of the conciliation proceeding, such notice shall be an
5 assessment of the amount of tax specified therein, together with the
6 interest, additions to tax and penalties stated in such notice, except
7 only for any such tax or other amounts as to which the taxpayer has
8 within such ninety day period filed with the tax appeals tribunal a
9 petition under section 11-680 of this subchapter. If the notice of defi-
10 ciency or conciliation decision is addressed to a taxpayer whose last
11 known address is outside of the United States, such period shall be one
12 hundred fifty days instead of ninety days.

13 3. Restrictions on assessment and levy. No assessment of a deficiency
14 in tax and no levy or proceeding in court for its collection shall be
15 made, begun or prosecuted, except as otherwise provided in section
16 11-685 of this subchapter, until a notice of deficiency has been mailed
17 to the taxpayer, nor until the expiration of the time for filing a peti-
18 tion with the tax appeals tribunal contesting such notice, nor, if a
19 petition with respect to the taxable year has been both served on the
20 commissioner of finance and filed with the tax appeals tribunal, until
21 the decision of the tax appeals tribunal has become final. For excep-
22 tion in the case of judicial review of the decision of the tax appeals
23 tribunal, see subdivision three of section 11-681 of this subchapter.

24 4. Exceptions for mathematical errors. If a mathematical error appears
25 on a return, including an overstatement of the amount paid as estimated
26 tax, the commissioner of finance shall notify the taxpayer that an
27 amount of tax in excess of that shown upon the return is due, and that
28 such excess has been assessed. Such notice shall not be considered as a
29 notice of deficiency for the purposes of this section, subdivision six
30 of section 11-678, limiting credits or refunds after petition to the tax
31 appeals tribunal, or subdivision two of section 11-680 of this subchap-
32 ter, authorizing the filing of a petition with the tax appeals tribunal
33 based on a notice of deficiency, nor shall such assessment or collection
34 be prohibited by the provisions of subdivision three of this section.

35 5. Exception where federal or New York state change or correction is
36 not reported.

37 (a) If the taxpayer fails to comply with subchapter two, three or
38 three-A of this chapter in not reporting a change or correction or rene-
39 gotiation, or computation or recomputation of tax, increasing or
40 decreasing its federal or New York state taxable income, alternative
41 minimum taxable income or other basis of tax as reported on its federal
42 or New York state income tax return or in not reporting a change or
43 correction or renegotiation, or computation or recomputation of tax,
44 which is treated in the same manner as if it were a deficiency for
45 federal or New York state income tax purposes or in not filing an
46 amended return or in not reporting the execution of a notice of waiver
47 executed pursuant to subsection (d) of section six thousand two hundred
48 thirteen of the internal revenue code or pursuant to subdivision (f) of
49 section one thousand eighty-one of the tax law, instead of the mode and
50 time of assessment provided for in subdivision two of this section, the
51 commissioner of finance may assess a deficiency based upon such
52 increased or decreased federal or New York state taxable income, alter-
53 native minimum taxable income or other basis of tax by mailing to the
54 taxpayer a notice of additional tax due specifying the amount of the
55 deficiency, and such deficiency, together with the interest, additions
56 to tax and penalties stated in such notice, shall be deemed assessed on

1 the date such notice is mailed unless within thirty days after the mail-
2 ing of such notice a report of the federal or New York state change or
3 correction or renegotiation, or computation or recomputation of tax, or
4 an amended return, where such return was required by subchapter two or
5 three of this chapter, is filed accompanied by a statement showing wher-
6 ein such federal or New York state determination and such notice of
7 additional tax due are erroneous.

8 (b) Such notice shall not be considered as a notice of deficiency for
9 the purposes of this section, subdivision six of section 11-678, limit-
10 ing credits or refunds after petition to the tax appeals tribunal, or
11 subdivision two of section 11-680 of this subchapter, authorizing the
12 filing of a petition with the tax appeals tribunal based on a notice of
13 deficiency, nor shall such assessment or the collection thereof be
14 prohibited by the provisions of subdivision three of this section.

15 (c) If the taxpayer has terminated its existence, a notice of addi-
16 tional tax due may be mailed to the taxpayer's last known address in or
17 out of the city, and such notice shall be sufficient for purposes of
18 this subchapter. If the commissioner of finance has received notice that
19 a person is acting for the taxpayer in a fiduciary capacity, a copy of
20 such notice shall also be mailed to the fiduciary named in such notice.

21 6. Waiver of restrictions. The taxpayer shall at any time, whether or
22 not a notice of deficiency has been issued, have the right to waive the
23 restrictions on assessment and collection of the whole or any part of
24 the deficiency by a signed notice in writing filed with the commissioner
25 of finance.

26 7. Two or more corporations. In case of a combined return under
27 subchapter two or three-A or a consolidated return under subchapter
28 three of two or more corporations, the commissioner of finance may
29 determine a deficiency of tax under subchapter two, three or three-A of
30 this chapter with respect to the entire tax due upon such return against
31 any taxpayer included therein. In the case of a taxpayer which might
32 have been included in such a return under subchapter two, three or
33 three-A of this chapter when the tax was originally reported, the
34 commissioner of finance may determine a deficiency of tax under subchap-
35 ter two, three or three-A of this chapter against such taxpayer and
36 against any other taxpayers which might have been included in such a
37 return.

38 8. Deficiency defined. For the purposes of this subchapter, a defi-
39 ciency means the amount of the tax imposed by the named subchapters, or
40 any of them, less: (a) the amount shown as the tax upon the taxpayer's
41 return, whether the return was made or the tax computed by it or by the
42 commissioner of finance, and less (b) the amounts previously assessed,
43 or collected without assessment, as a deficiency and plus (c) the amount
44 of any rebates. For the purpose of this definition, the tax imposed by
45 subchapter two, three or three-A of this chapter and the tax shown on
46 the return shall both be determined without regard to any payment of
47 estimated tax; and a rebate means so much of an abatement, credit,
48 refund or other repayment, whether or not erroneous, as was made on the
49 ground that the amounts entering into the definition of a deficiency
50 showed a balance in favor of the taxpayer.

51 9. Exception where change or correction of sales and compensating use
52 tax liability is not reported.

53 (a) If a taxpayer fails to comply with subchapter two or three-A of
54 this chapter in not reporting a change or correction of its sales and
55 compensating use tax liability or in not filing a copy of an amended
56 return or report relating to its sales and compensating use tax liabil-

1 ity, instead of the mode and time of assessment provided for in subdivi-
2 sion two of this section, the commissioner of finance may assess a defi-
3 ciency based upon such changed or corrected sales and compensating use
4 tax liability, as same relates to credits claimed under subchapter two
5 or three-A of this chapter, by mailing to the taxpayer a notice of addi-
6 tional tax due specifying the amount of the deficiency, and such defi-
7 ciency, together with the interest, additions to tax and penalties stat-
8 ed in such notice, shall be deemed assessed on the date such notice is
9 mailed unless within thirty days after the mailing of such notice a
10 report of the state change or correction or a copy of an amended return
11 or report, where such copy was required by subchapter two or three-A, is
12 filed accompanied by a statement showing wherein such state determi-
13 nation and such notice of additional tax due are erroneous.

14 (b) Such notice shall not be considered as a notice of deficiency for
15 the purposes of this section, subdivision six of section 11-678, limit-
16 ing credits or refunds after petition to the tax appeals tribunal, or
17 subdivision two of section 11-680, authorizing the filing of a petition
18 with the tax appeals tribunal based on a notice of deficiency, nor shall
19 such assessment or the collection thereof be prohibited by the
20 provisions of subdivision three of this section.

21 (c) If the taxpayer has terminated its existence, a notice of addi-
22 tional tax due may be mailed to its last known address in or out of the
23 city, and such notice shall be sufficient for purposes of this subchap-
24 ter. If the commissioner of finance has received notice that a person is
25 acting for the taxpayer in a fiduciary capacity, a copy of such notice
26 shall also be mailed to the fiduciary named in such notice.

27 § 11-673 Assessment. 1. Assessment date. The amount of tax which a
28 return shows to be due, or the amount of tax which a return would have
29 shown to be due but for a mathematical error, shall be deemed to be
30 assessed on the date of filing of the return, including any amended
31 return showing an increase of tax. If a notice of deficiency has been
32 mailed, the amount of the deficiency shall be deemed to be assessed on
33 the date specified in subdivision two of section 11-672 of this subchap-
34 ter if no petition is both served on the commissioner of finance and
35 filed with the tax appeals tribunal, or if a petition is so served and
36 filed, then upon the date when a decision of the tax appeals tribunal
37 establishing the amount of the deficiency becomes final. If a report or
38 an amended return filed pursuant to subchapter two, three or three-A of
39 this chapter concedes the accuracy of a federal or New York state
40 adjustment or change or correction or renegotiation or computation or
41 recomputation of tax, any deficiency in tax under subchapter two, three
42 or three-A of this chapter resulting therefrom shall be deemed to be
43 assessed on the date of filing such report or amended return, and such
44 assessment shall be timely notwithstanding section 11-674 of this
45 subchapter.

46 If a report filed pursuant to subchapter two of this chapter concedes
47 the accuracy of a state change or correction of sales and compensating
48 use tax liability, any deficiency in tax under subchapter two or three-A
49 of this chapter resulting therefrom shall be deemed assessed on the date
50 of filing such report, and such assessment shall be timely notwithstand-
51 ing section 11-674 of this subchapter.

52 If a notice of additional tax due, as prescribed in subdivision five
53 of section 11-672 of this subchapter, has been mailed, the amount of the
54 deficiency shall be deemed to be assessed on the date specified in such
55 subdivision unless within thirty days after the mailing of such notice a
56 report of the federal or New York state adjustment or change or

1 correction or renegotiation or computation or recomputation of tax, or
2 an amended return, where such return was required by subchapter two,
3 three or three-A of this chapter, is filed accompanied by a statement
4 showing wherein such federal or New York state determination and such
5 notice of additional tax due are erroneous.

6 If a notice of additional tax due, as prescribed in subdivision nine
7 of section 11-672 of this subchapter, has been mailed, the amount of the
8 deficiency shall be deemed to be assessed on the date specified in such
9 subdivision unless within thirty days after the mailing of such notice a
10 report of the state change or correction, or a copy of an amended return
11 or report, where such copy was required by subchapter two or three-A of
12 this chapter, is filed accompanied by a statement showing wherein such
13 state determination and such notice of additional tax due are erroneous.

14 Any amount paid as a tax or in respect of a tax, other than amounts
15 paid as estimated tax, shall be deemed to be assessed upon the date of
16 receipt of payment notwithstanding any other provisions.

17 2. Other assessment powers. If the mode or time for the assessment of
18 any tax under the named subchapters, including interest, additions to
19 tax and assessable penalties, is not otherwise provided for, the commis-
20 sioner of finance may establish the same by regulations.

21 3. Estimated tax. No unpaid amount of estimated tax under subchapter
22 two, three or three-A of this chapter shall be assessed.

23 4. Supplemental assessment. The commissioner of finance may, at any
24 time within the period described for assessment, make a supplemental
25 assessment, subject to the provisions of section 11-672 of this subchap-
26 ter where applicable, whenever it is ascertained that any assessment is
27 imperfect or incomplete in any material respect.

28 5. Cross reference. For assessment in case of jeopardy, see section
29 11-685 of this subchapter.

30 § 11-674 Limitations on assessment. 1. General. Except as otherwise
31 provided in this section, any tax under the named subchapters shall be
32 assessed within three years after the return was filed, whether or not
33 such return was filed on or after the date prescribed.

34 2. Time return deemed filed. For the purposes of this section, a
35 return of tax filed before the last day prescribed by law or by regu-
36 lations promulgated pursuant to law for the filing thereof shall be
37 deemed to be filed on such last day.

38 3. Exceptions.

39 (a) Assessment at any time. The tax may be assessed at any time if:

40 (1) no return is filed,

41 (2) a false or fraudulent return is filed with intent to evade tax,

42 (3) in the case of the tax imposed under subchapter two, three or
43 three-A of this chapter, the taxpayer fails to file a report or amended
44 return required thereunder, in respect of an increase or decrease in
45 federal or New York state taxable income, alternative minimum taxable
46 income or other basis of tax or federal or New York state tax, or in
47 respect of a change or correction or renegotiation or in respect of the
48 execution of a notice of waiver report of which is required thereunder,
49 or computation or recomputation of tax, which is treated in the same
50 manner as if it were a deficiency for federal or New York state income
51 tax purposes, or

52 (4) in the case of the tax imposed under subchapter two or three-A of
53 this chapter, the taxpayer fails to file a report or amended return or
54 report required thereunder, in respect of a change or correction of
55 sales and compensating use tax liability, relating to the purchase or

1 use of items for which a sales or compensating use tax credit against
2 the tax imposed by subchapter two or three-A was claimed.

3 (b) Extension by agreement. Where, before the expiration of the time
4 prescribed in this section for the assessment of tax, both the commis-
5 sioner of finance and the taxpayer have consented in writing to its
6 assessment after such time, the tax may be assessed at any time prior to
7 the expiration of the period agreed upon. The period so agreed upon may
8 be extended by subsequent agreements in writing made before the expira-
9 tion of the period previously agreed upon.

10 (c) Report of federal or New York state change or correction. In the
11 case of the tax imposed under subchapter two, three or three-A of this
12 chapter, if the taxpayer files a report or amended return required there-
13 under, in respect of an increase or decrease in federal or New York
14 state taxable income, alternative minimum taxable income or other basis
15 of tax or federal or New York state tax, or in respect of a change or
16 correction or renegotiation, or in respect of the execution of a notice
17 of waiver report of which is required thereunder, or computation or
18 recomputation of tax, which is treated in the same manner as if it were
19 a deficiency for federal or New York state income tax purposes, the
20 assessment, if not deemed to have been made upon the filing of the
21 report or amended return may be made at any time within two years after
22 such report or amended return was filed. The amount of such assessment
23 of tax shall not exceed the amount of the increase in city tax attribut-
24 able to such federal or New York state change or correction or renegoti-
25 ation, or computation or recomputation of tax. The provisions of this
26 paragraph shall not affect the time within which or the amount for which
27 an assessment may otherwise be made.

28 (d) Deficiency attributable to net operating loss carryback. If a
29 deficiency of tax under subchapter two or three-A of this chapter is
30 attributable to the application to taxpayer of a net operating loss
31 carryback or a capital loss carryback, it may be assessed at any time
32 that a deficiency for the taxable year of the loss may be assessed.

33 (e) Recovery of erroneous refund. An erroneous refund shall be
34 considered an underpayment of tax on the date made, and an assessment of
35 a deficiency arising out of an erroneous refund may be made at any time
36 within two years from the making of the refund, except that the assess-
37 ment may be made within five years from the making of the refund if it
38 appears that any part of the refund was induced by fraud or misrepresen-
39 tation of a material fact.

40 (f) Request for prompt assessment. The tax shall be assessed within
41 eighteen months after written request therefor, made after the return is
42 filed, by the taxpayer or by a fiduciary representing the taxpayer, but
43 not more than three years after the return was filed, except as other-
44 wise provided in this subdivision and subdivision four of this section.
45 This subdivision shall not apply unless:

46 (1) (A) such written request notifies the commissioner of finance that
47 the taxpayer contemplates dissolution at or before the expiration of
48 such eighteen-month period, (B) the dissolution is in good faith begun
49 before the expiration of such eighteen-month period, (C) the dissolution
50 is completed;

51 (2) (A) such written request notifies the commissioner of finance that
52 a dissolution has in good faith been begun, and (B) the dissolution is
53 completed; or

54 (3) a dissolution has been completed at the time such written request
55 is made.

1 (g) Change of the allocation of taxpayer's income or capital. (1)
2 With regard to taxable years beginning before January first, two thou-
3 sand fifteen, no change of the allocation of income or capital upon
4 which the taxpayer's return, or any additional assessment, was based
5 shall be made where an assessment of tax is made during the additional
6 period of limitation under subparagraph three or four of paragraph (a)
7 of this subdivision, or under paragraph (c), (d) or (i) of this subdivi-
8 sion; and where any such assessment has been made, or where a notice of
9 deficiency has been mailed to the taxpayer on the basis of any such
10 proposed assessment, no change of the allocation of income or capital
11 shall be made in a proceeding on the taxpayer's claim for refund of such
12 assessment or on the taxpayer's petition for redetermination of such
13 deficiency.

14 (2) With regard to taxable years beginning on or after January first,
15 two thousand fifteen, no change of the allocation of income or capital
16 upon which the taxpayer's return, or any additional assessment, was
17 based shall be made where an assessment of tax is made during the addi-
18 tional period of limitation under subparagraph three or four of para-
19 graph (a) or under paragraph (c), (d) or (i) of this subdivision, except
20 to the extent such assessment is based on an increase or decrease in New
21 York state taxable income or other basis of tax or New York state tax,
22 or based on a change, correction or renegotiation of tax, or based on
23 the execution of a notice of waiver report which is required there-
24 under, or computation or recomputation of tax, which is treated in the
25 same manner as if it were a deficiency for New York state income tax
26 purposes; and where any such assessment has been made, or where a notice
27 of deficiency has been mailed to the taxpayer on the basis of any such
28 proposed assessment, no change of the allocation of income or capital
29 shall be made in a proceeding on the taxpayer's claim for refund of
30 such assessment or on the taxpayer's petition for redetermination of
31 such deficiency, except to the extent such assessment is based on an
32 increase or decrease in New York state taxable income or other basis of
33 tax or New York state tax, or based on a change or correction or renegoti-
34 ation of tax, or based on the execution of a notice of waiver report
35 which is required thereunder, or computation or recomputation of tax,
36 which is treated in the same manner as if it were an overpayment for New
37 York state income tax purposes.

38 (h) Report concerning waste treatment facility. Under the circum-
39 stances described in subparagraph three of paragraph (g) of subdivision
40 eight of section 11-602 of this chapter or in subparagraph three of
41 paragraph (g) of subdivision eight of section 11-652 of this chapter,
42 the tax may be assessed within three years after the filing of the
43 report containing the information required by such paragraph.

44 (i) Report of changed or corrected sales and compensating use tax
45 liability. In the case of a tax imposed under subchapter two or three-A
46 of this chapter, if the taxpayer files a report or amended return or
47 report required thereunder, in respect of a change or correction of
48 sales and compensating use tax liability, the assessment, if not deemed
49 to have been made upon the filing of the report, may be made at any time
50 within two years after such report or amended return or report was
51 filed. The amount of such assessment of tax shall not exceed the amount
52 of the increase in city tax attributable to such state change or
53 correction. The provisions of this paragraph shall not affect the time
54 within which or the amount for which an assessment may otherwise be
55 made.

1 4. Omission of income on return. The tax may be assessed at any time
2 within six years after the return was filed if a taxpayer omits from
3 gross income required to be reported on a return under any of the named
4 subchapters an amount properly includable therein which is in excess of
5 twenty-five per centum of the amount of gross income stated in the
6 return.

7 For the purposes of this subdivision:

8 (a) the term "gross income" means gross income for federal income tax
9 purposes as reportable on a return under subchapter two or three-A of
10 this chapter and "gross earnings", "gross income," "gross operating
11 income" and "gross direct premiums less return premiums," as those terms
12 are used in whichever of the named subchapters is applicable;

13 (b) there shall not be taken into account any amount which is omitted
14 in the return if such amount is disclosed in the return, or in a state-
15 ment attached to the return, in a manner adequate to apprise the commis-
16 sioner of finance of the nature and amount of such item.

17 5. Suspension of running of period of limitations. The running of the
18 period of limitations on assessment or collection of tax or other
19 amount, or of a transferee's liability, shall, after the mailing of a
20 notice of deficiency, be suspended for the period during which the
21 commissioner of finance is prohibited under subdivision three of section
22 11-672 of this subchapter from making the assessment or from collecting
23 by levy.

24 § 11-675 Interest on underpayment. 1. General. If any amount of tax
25 is not paid on or before the last date prescribed in whichever of the
26 named subchapters is applicable for payment, interest on such amount at
27 the underpayment rate set by the commissioner of finance pursuant to
28 section 11-687 of this subchapter, or, if no rate is set, at the rate of
29 seven and one-half percent per annum shall be paid for the period from
30 such last date to the date paid, whether or not any extension of time
31 for payment was granted. Interest under this subdivision shall not be
32 paid if the amount thereof is less than one dollar.

33 2. Exception as to estimated tax. This section shall not apply to any
34 failure to pay estimated tax under subchapter two, three or three-A of
35 this chapter.

36 3. Exception for mathematical error. No interest shall be imposed on
37 any underpayment of tax due solely to mathematical error if the taxpayer
38 files a return within the time prescribed in whichever of the named
39 subchapters is applicable, including any extension of time, and pays the
40 amount of underpayment within three months after the due date of such
41 return, as it may be extended.

42 4. Suspension of interest on deficiencies. If a waiver of
43 restrictions on assessment of a deficiency has been filed by the taxpay-
44 er, and if notice and demand by the commissioner of finance for payment
45 of such deficiency is not made within thirty days after the filing of
46 such waiver, interest shall not be imposed on such deficiency for the
47 period beginning immediately after such thirtieth day and ending with
48 the date of notice and demand.

49 5. Tax reduced by carryback. If the amount of tax under subchapter
50 two or three-A for any taxable year is reduced by reason of a carryback
51 of a net operating loss or a capital loss, such reduction in tax shall
52 not affect the computation of interest under this section for the period
53 ending with the filing date for the taxable year in which the net oper-
54 ating loss or capital loss arises. Such filing date shall be determined
55 without regard to extensions of time to file.

1 6. Interest treated as tax. Interest under this section shall be paid
2 upon notice and demand and shall be assessed, collected and paid in the
3 same manner as the taxes under the named subchapters. Any reference in
4 this subchapter to the tax imposed by the named subchapters, or any of
5 them, shall be deemed also to refer to interest imposed by this section
6 on such tax.

7 7. Interest on penalties or addition to tax. Interest shall be
8 imposed under subdivision one in respect to any assessable penalty or
9 addition to tax only if such assessable penalty or addition to tax is
10 not paid within ten days from the date of the notice and demand therefor
11 under subdivision two of section 11-683 of this subchapter in such case
12 interest shall be imposed only for the period from such date of the
13 notice and demand to the date of payment.

14 8. Payment within ten days after notice and demand. If notice and
15 demand is made for payment of any amount under subdivision two of
16 section 11-683 of this subchapter, and if such amount is paid within ten
17 days after the date of such notice and demand, interest under this
18 section on the amount so paid shall not be imposed for the period after
19 the date of such notice and demand.

20 9. Limitation on assessment and collection. Interest prescribed under
21 this section may be assessed and collected at any time during the period
22 within which the tax or other amount to which such interest relates may
23 be assessed and collected respectively.

24 10. Interest on erroneous refund. Any portion of tax or other amount
25 which has been erroneously refunded, and which is recoverable by the
26 commissioner of finance, shall bear interest at the underpayment rate
27 set by the commissioner of finance pursuant to section 11-687 of this
28 subchapter, or, if no rate is set, at the rate of seven and one-half
29 percent per annum from the date of the payment of the refund, but only
30 if it appears that any part of the refund was induced by fraud or a
31 misrepresentation of a material fact.

32 11. Satisfaction by credits. If any portion of a tax is satisfied by
33 credit of an overpayment, then no interest shall be imposed under this
34 section on the portion of the tax so satisfied for any period during
35 which, if the credit had not been made, interest would have been allow-
36 able with respect to such overpayment.

37 § 11-676 Additions to tax and civil penalties. 1. (a) Failure to file
38 return. (A) In case of failure to file a return under the named
39 subchapters on or before the prescribed date, determined with regard to
40 any extension of time for filing, unless it is shown that such failure
41 is due to reasonable cause and not due to willful neglect, there shall
42 be added to the amount required to be shown as tax on such return five
43 percent of the amount of such tax if the failure is for not more than
44 one month, with an additional five percent for each additional month or
45 fraction thereof during which such failure continues, not exceeding
46 twenty-five percent in the aggregate.

47 (B) In the case of a failure to file a return of tax within sixty days
48 of the date prescribed for filing of such return, determined with regard
49 to any extension of time for filing, unless it is shown that such fail-
50 ure is due to reasonable cause and not due to willful neglect, the addi-
51 tion to tax under subparagraph (A) of this paragraph shall not be less
52 than the lesser of one hundred dollars or one hundred percent of the
53 amount required to be shown as tax on such return.

54 (C) For purposes of this paragraph, the amount of tax required to be
55 shown on the return shall be reduced by the amount of any part of the
56 tax which is paid on or before the date prescribed for payment of the

1 tax and by the amount of any credit against the tax which may be claimed
2 upon the return.

3 (b) Failure to pay tax shown on return. In case of failure to pay the
4 amounts shown as tax on any return required to be filed under the named
5 subchapters on or before the prescribed date, determined with regard to
6 any extension of time for payment, unless it is shown that such failure
7 is due to reasonable cause and not due to willful neglect, there shall
8 be added to the amount shown as tax on such return one-half of one
9 percent of the amount of such tax if the failure is not for more than
10 one month, with an additional one-half of one percent for each addi-
11 tional month or fraction thereof during which such failure continues,
12 not exceeding twenty-five percent in the aggregate. For the purpose of
13 computing the addition for any month the amount of tax shown on the
14 return shall be reduced by the amount of any part of the tax which is
15 paid on or before the beginning of such month and by the amount of any
16 credit against the tax which may be claimed upon the return. If the
17 amount of tax required to be shown on a return is less than the amount
18 shown as tax on such return, this paragraph shall be applied by substi-
19 tuting such lower amount.

20 (c) Failure to pay tax required to be shown on return. In case of
21 failure to pay any amount in respect of any tax required to be shown on
22 a return required to be filed under the named subchapters which is not
23 so shown, including an assessment made pursuant to subdivision one of
24 section 11-673 of this subchapter, within ten days of the date of a
25 notice and demand therefor, unless it is shown that such failure is due
26 to reasonable cause and not due to willful neglect, there shall be added
27 to the amount of tax stated in such notice and demand one-half of one
28 percent of such tax if the failure is not for more than one month, with
29 an additional one-half of one percent for each additional month or frac-
30 tion thereof during which such failure continues, not exceeding twenty-
31 five percent in the aggregate. For the purpose of computing the addition
32 for any month, the amount of tax stated in the notice and demand shall
33 be reduced by the amount of any part of the tax which is paid before the
34 beginning of such month.

35 (d) Limitations on additions.

36 (A) With respect to any return, the amount of the addition under para-
37 graph (a) of this subdivision shall be reduced by the amount of the
38 addition under paragraph (b) of this subdivision for any month to which
39 an addition applies under both paragraphs (a) and (b). In any case
40 described in subparagraph (B) of paragraph (a) of this subdivision, the
41 amount of the addition under such paragraph (a) shall not be reduced
42 below the amount provided in such subparagraph.

43 (B) With respect to any return, the maximum amount of the addition
44 permitted under paragraph (c) of this subdivision shall be reduced by
45 the amount of the addition under paragraph (a) of this subdivision,
46 determined without regard to subparagraph (B) of such paragraph (a),
47 which is attributable to the tax for which the notice and demand is made
48 and which is not paid within ten days of such notice and demand.

49 2. Deficiency due to negligence. (a) If any part of a deficiency is
50 due to negligence or intentional disregard of this subchapter or any of
51 the named subchapters or rules or regulations thereunder, but without
52 intent to defraud, there shall be added to the tax an amount equal to
53 five percent of the deficiency.

54 (b) There shall be added to the tax, in addition to the amount deter-
55 mined under paragraph (a) of this subdivision, an amount equal to fifty
56 percent of the interest payable under subdivision one of section 11-675

1 with respect to the portion of the deficiency described in such para-
2 graph (a) which is attributable to the negligence or intentional disre-
3 gard referred to in such paragraph (a), for the period beginning on the
4 last date prescribed by law for payment of such deficiency, determined
5 without regard to any extension, and ending on the date of the assess-
6 ment of the tax, or, if earlier, the date of the payment of the tax.

7 (c) If any payment is shown on a return made by a payor with respect
8 to dividends, patronage dividends and interest under subsection (a) of
9 section six thousand forty-two, subsection (a) of section six thousand
10 forty-four or subsection (a) of section six thousand forty-nine of the
11 internal revenue code of nineteen hundred fifty-four, respectively, and
12 the payee fails to include any portion of such payment in gross income,
13 as that term is defined in paragraph (a) of subdivision four of section
14 11-674, any portion of an underpayment attributable to such failure
15 shall be treated, for purposes of this subdivision, as due to negligence
16 in the absence of clear and convincing evidence to the contrary. If any
17 addition to tax is imposed under this subdivision by reason of the
18 preceding sentence, the amount of the addition to tax imposed by para-
19 graph (a) of this subdivision shall be five percent of the portion of
20 the underpayment which is attributable to the failure described in this
21 paragraph.

22 3. Failure to file declaration or underpayment of estimated tax. If
23 any taxpayer fails to file a declaration of estimated tax under subchap-
24 ter two, three or three-A of this chapter, or fails to pay all or any
25 part of an amount which is applied as an installment against such esti-
26 mated tax, it shall be deemed to have made an underpayment of estimated
27 tax. There shall be added to the tax for the taxable year an amount at
28 the underpayment rate set by the commissioner of finance pursuant to
29 section 11-687 of this subchapter, or, if no rate is set, at the rate of
30 seven and one-half percent per annum upon the amount of the underpayment
31 for the period of the underpayment but not beyond the fifteenth day of
32 the fourth month following the close of the taxable year. Provided,
33 however, that, for taxable years beginning on or after January first,
34 two thousand seventeen and before January first, two thousand eighteen,
35 no amount shall be added to the tax with respect to the portion of such
36 tax related to the amount of any interest deductions directly or indi-
37 rectly attributable to the amount included in exempt CFC income pursuant
38 to subparagraph (ii) of paragraph (b) of subdivision five-a of section
39 11-652 of this chapter or the forty percent reduction of such exempt CFC
40 income in lieu of interest attribution if the election described in
41 paragraph (b) of subdivision five-a of such section is made. The amount
42 of the underpayment shall be, with respect to any installment of esti-
43 mated tax computed on the basis of either the preceding year's tax or
44 the second preceding year's tax, the excess of the amount required to be
45 paid over the amount, if any, paid on or before the last day prescribed
46 for such payment or, with respect to any other installment of estimated
47 tax, the excess of the amount of the installment which would be required
48 to be paid if the estimated tax were equal to ninety percent of the tax
49 shown on the return for the taxable year, or if no return was filed,
50 ninety percent of the tax for such year, over the amount, if any, of the
51 installment paid on or before the last day prescribed for such payment.
52 In any case in which there would be no underpayment if "eighty percent"
53 were substituted for "ninety percent" each place it appears in this
54 subdivision, the addition to the tax shall be equal to seventy-five
55 percent of the amount otherwise determined. No underpayment shall be

1 deemed to exist with respect to a declaration or installment otherwise
2 due on or after the termination of existence of the taxpayer.

3 4. Exception to addition for underpayment of estimated tax. The addi-
4 tion to tax under subdivision three of this section with respect to any
5 underpayment of any amount which is applied as an installment against
6 estimated tax under subchapter two, three or three-A of this chapter
7 shall not be imposed if the total amount of all payments of estimated
8 tax made on or before the last date prescribed for the payment of any
9 such amount equals or exceeds the amount which would have been required
10 to be paid on or before such date if the estimated tax were whichever of
11 the following is the least:

12 (a) The tax shown on the return of the taxpayer for the preceding
13 taxable year, if a return showing a liability for tax was filed by the
14 taxpayer for the preceding taxable year and such preceding year was a
15 taxable year of twelve months, or

16 (b) An amount equal to the tax computed at the rates applicable to the
17 taxable year, but otherwise on the basis of the facts shown on the
18 return of the taxpayer for, and the law applicable to, the preceding
19 taxable year, or

20 (c) (i) An amount equal to ninety per centum of the tax for the taxa-
21 ble year computed by placing on an annualized basis the taxable income:

22 (1) for the first three months or the first five months of the taxable
23 year, in the case of the installment required to be paid in the sixth
24 month,

25 (2) for the first six months or the first eight months of the taxable
26 year, in the case of the installment required to be paid in the ninth
27 month, and

28 (3) for the first nine months or the first eleven months of the taxa-
29 ble year, in the case of the installment required to be paid in the
30 twelfth month.

31 (ii) For purposes of subparagraph (i) of this paragraph the taxable
32 income shall be placed on an annualized basis by:

33 (1) multiplying it by twelve, or, in the case of a taxable year of
34 less than twelve months, the number of months in the taxable year, and

35 (2) dividing the resulting amount by the number of months in the taxa-
36 ble year, three, five, six, eight, nine or eleven, as the case may be,
37 referred to in subparagraph (i) of this paragraph, or

38 (d) (i) If the base period percentage for any six consecutive months
39 of the taxable year equals or exceeds seventy percent, an amount equal
40 to ninety percent of the tax determined in the following manner:

41 (A) take the taxable income for all months during the taxable year
42 preceding the filing month,

43 (B) divide such amount by the base period percentage for all months
44 during the taxable year preceding the filing month,

45 (C) determine the tax on the amount determined under clause (B) of
46 this subparagraph, and

47 (D) multiply the tax determined under clause (C) of this subparagraph
48 by the base period percentage for the filing month and all months during
49 the taxable year preceding the filing month.

50 (ii) For purposes of subparagraph (i) of this paragraph:

51 (A) the base period percentage for any period of months shall be the
52 average percent which the taxable income for the corresponding months in
53 each of the three preceding taxable years bears to the taxable income
54 for the three preceding taxable years. The commissioner of finance may
55 by regulations provide for the determination of the base period percent-

1 age in the case of reorganizations, new corporations, and other similar
2 circumstances, and

3 (B) the term "filing month" means the month in which the installment
4 is required to be paid.

5 5. (a) Except as provided in paragraph (b) of this subdivision, para-
6 graphs (a) and (b) of subdivision four of this section shall not apply
7 in the case of any corporation, or any predecessor corporation, which
8 had entire net income, or the portion thereof allocated within the city,
9 of one million dollars or more for any taxable year during the three
10 taxable years immediately preceding the taxable year involved.

11 (b) The amount treated as the estimated tax under paragraphs (a) and
12 (b) of subdivision four of this section shall in no event be less than
13 seventy-five percent of the tax shown on the return for the taxable year
14 beginning in nineteen hundred eighty-three or, if no return was filed,
15 seventy-five percent of the tax for such year.

16 6. Deficiency due to fraud. (a) If any part of a deficiency is due to
17 fraud, there shall be added to the tax an amount equal to two times the
18 deficiency.

19 (b) The addition to tax under this subdivision shall be in lieu of any
20 other addition to tax imposed by subdivision one or two of this section.

21 7. Additional penalty. Any person who with fraudulent intent shall
22 fail to pay under the named subchapters any tax, or to make, render,
23 sign or certify any return or declaration of estimated tax, or to supply
24 any information within the time required by or under any of the named
25 subchapters, shall be liable to penalty of not more than one thousand
26 dollars, in addition to any other amounts required under this subchapter
27 to be imposed, assessed and collected by the commissioner of finance.
28 The commissioner of finance shall have the power, in his or her
29 discretion, to waive, reduce or compromise any penalty under this subdi-
30 vision.

31 8. Additions treated as tax. The additions to tax and penalties
32 provided by this section shall be paid upon notice and demand and shall
33 be assessed, collected and paid in the same manner as taxes, and any
34 reference in this subchapter to tax imposed by any of the named subchap-
35 ters shall be deemed also to refer to the additions to tax and penalties
36 provided by this section. For purposes of section 11-672 of this
37 subchapter, this subdivision shall not apply to:

38 (a) any addition to tax under subdivision one of this section except
39 as to that portion attributable to a deficiency;

40 (b) any addition to tax under subdivision three or fourteen of this
41 section; and

42 (c) any additional penalties under subdivisions seven and twelve of
43 this section.

44 9. Determination of deficiency. For purposes of subdivisions two and
45 six of this section the amount shown as the tax by the taxpayer upon its
46 return shall be taken into account in determining the amount of the
47 deficiency only if such return was filed on or before the last day
48 prescribed for the filing of such return, determined with regard to any
49 extension of time for such filing.

50 10. Person defined. For purposes of subdivisions seven and twelve of
51 this section, the term "person" includes an individual, corporation or
52 partnership or an officer or employee of any corporation, including a
53 dissolved corporation, or a member or employee of any partnership, who
54 as such officer, employee, or member is under a duty to perform the act
55 in respect of which the violation occurs.

1 11. Substantial understatement of liability. If there is a substantial
2 understatement of tax for any taxable year, there shall be added to the
3 tax an amount equal to ten percent of the amount of any underpayment
4 attributable to such understatement. For purposes of this subdivision,
5 there is a substantial understatement of tax for any taxable year if the
6 amount of the understatement for the taxable year exceeds the greater of
7 ten percent of the tax required to be shown on the return for the taxa-
8 ble year or five thousand dollars. For purposes of this subdivision, the
9 term "understatement" means the excess of the amount of the tax required
10 to be shown on the return for the taxable year, over the amount of the
11 tax imposed which is shown on the return, reduced by any rebate, within
12 the meaning of subdivision eight of section 11-672 of this subchapter.
13 The amount of such understatement shall be reduced by that portion of
14 the understatement which is attributable to the tax treatment of any
15 item by the taxpayer if there is or was substantial authority for such
16 treatment, or any item with respect to which the relevant facts affect-
17 ing the item's tax treatment are adequately disclosed in the return or
18 in a statement attached to the return. The commissioner of finance may
19 waive all or any part of the addition to tax provided by this subdivi-
20 sion on a showing by the taxpayer that there was reasonable cause for
21 the understatement, or part thereof, and that the taxpayer acted in good
22 faith.

23 12. Aiding or assisting in the giving of fraudulent returns, reports,
24 statements or other documents. (a) Any person who, with the intent that
25 tax be evaded, shall, for a fee or other compensation or as an incident
26 to the performance of other services for which such person receives
27 compensation, aid or assist in, or procure, counsel, or advise the prep-
28 aration or presentation under, or in connection with any matter arising
29 under this chapter of any return, report, declaration, statement or
30 other document which is fraudulent or false as to any material matter,
31 or supply any false or fraudulent information, whether or not such
32 falsity or fraud is with the knowledge or consent of the person author-
33 ized or required to present such return, report, declaration, statement
34 or other document shall pay a penalty not exceeding ten thousand
35 dollars.

36 (b) For purposes of paragraph (a) of this subdivision, the term
37 "procures" includes ordering, or otherwise causing, a subordinate to do
38 an act, and knowing of, and not attempting to prevent, participation by
39 a subordinate in an act. The term "subordinate" means any other person,
40 whether or not a director, officer, employee, or agent of the taxpayer
41 involved, over whose activities the person has direction, supervision,
42 or control.

43 (c) For purposes of paragraph (a) of this subdivision, a person
44 furnishing typing, reproducing, or other mechanical assistance with
45 respect to a document shall not be treated as having aided or assisted
46 in the preparation of such document by reason of such assistance.

47 (d) The penalty imposed by this subdivision shall be in addition to
48 any other penalty provided by law.

49 13. Failure to file report of information relating to certain interest
50 payments. In case of failure to file the report of information required
51 under either subdivision two-a of section 11-605 of this chapter or
52 subdivision two-a of section 11-655 of this chapter, unless it is shown
53 that such failure is due to reasonable cause and not due to willful
54 neglect, there shall be added to the tax a penalty of five hundred
55 dollars.

1 14. Failure to include on return information relating to issuer's
2 allocation percentage. Where a return is filed but does not contain (1)
3 the information necessary to compute the taxpayer's issuer's allocation
4 percentage, as defined in subparagraph one of paragraph (b) of subdivi-
5 sion three of section 11-604 of this chapter, where the same is called
6 for on the return, or, (2) the taxpayer's issuer's allocation percent-
7 age, where the same is called for on the return but where all of the
8 information necessary for the computation of such percentage is not
9 called for on the return, then unless it is shown that such failure is
10 due to reasonable cause and not due to willful neglect there shall be
11 added to the tax a penalty of five hundred dollars.

12 15. False or fraudulent document penalty. Any taxpayer that submits a
13 false or fraudulent document to the department shall be subject to a
14 penalty of one hundred dollars per document submitted, or five hundred
15 dollars per tax return submitted. Such penalty shall be in addition to
16 any other penalty or addition provided by law.

17 § 11-677 Overpayment. 1. General. The commissioner of finance,
18 within the applicable period of limitations, may credit an overpayment
19 of tax and interest on such overpayment against any liability in respect
20 of any tax imposed by this title on the taxpayer who made the overpay-
21 ment, and the balance shall be refunded out of the proceeds of the tax.
22 Such credit of an overpayment shall be applied before such overpay-
23 ment, or any portion thereof, is paid to the state commissioner of taxa-
24 tion and finance pursuant to section one hundred seventy-one-m of the
25 tax law.

26 2. Credits against estimated tax. The commissioner of finance may
27 prescribe regulations providing for the crediting against the estimated
28 tax under subchapter two, three or three-A of this chapter for any taxa-
29 ble year of the amount determined to be an overpayment of tax under any
30 such subchapter for a preceding taxable year. If any overpayment of tax
31 is so claimed as a credit against estimated tax for the succeeding taxa-
32 ble year, such amount shall be considered as a payment of the tax under
33 subchapter two, three or three-A of this chapter for the succeeding
34 taxable year, whether or not claimed as a credit in the declaration of
35 estimated tax for such succeeding taxable year, and no claim for credit
36 or refund of such overpayment shall be allowed for the taxable year for
37 which the overpayment arises.

38 3. Rule where no tax liability. If there is no tax liability for a
39 period in respect of which an amount is paid as tax, such amount shall
40 be considered an overpayment.

41 4. Assessment and collection after limitation period. If any amount
42 of tax is assessed or collected after the expiration of the period of
43 limitations properly applicable thereto, such amount shall be considered
44 an overpayment.

45 5. Assignment of overpayment. A credit for an overpayment of tax
46 under any of the named subchapters may be assigned by the taxpayer to a
47 corporation liable to pay taxes under any of the named subchapters, and
48 the assignee of the whole or any part of such credit, on filing such
49 assignment with the commissioner of finance, shall thereupon be entitled
50 to credit upon the books of the commissioner of finance for the amount
51 thereof on its current account for taxes, in the same manner and to the
52 same effect as though the credit had originally been allowed in its
53 favor.

54 6. Notwithstanding article fifty-two of the civil practice law and
55 rules or any other provision of law to the contrary, the procedures for
56 the enforcement of money judgments shall not apply to the department of

1 finance, or to any officer or employee of such department, as a garnish-
2 ee, with respect to any amount of money to be refunded or credited to a
3 taxpayer under this chapter.

4 § 11-678 Limitations on credit or refund. 1. General. Claim for
5 credit or refund of an overpayment of tax under any of the named
6 subchapters shall be filed by the taxpayer within three years from the
7 time the return was filed or two years from the time the tax was paid,
8 whichever of such periods expires the later, or if no return was filed
9 within two years from the time the tax was paid. If the claim is filed
10 within the three year period, the amount of the credit or refund shall
11 not exceed the portion of the tax paid within the three years immediate-
12 ly preceding the filing of the claim plus the period of any extension of
13 time for filing the return. If the claim is not filed within the three
14 year period, but is filed within the two year period, the amount of the
15 credit or refund shall not exceed the portion of the tax paid during the
16 two years immediately preceding the filing of the claim. Except as
17 otherwise provided in this section, if no claim is filed, the amount of
18 a credit or refund shall not exceed the amount which would be allowable
19 if a claim had been filed on the date the credit or refund is allowed.
20 For special restriction in a proceeding on a claim for refund of tax
21 paid pursuant to an assessment made as a result of: (a) a net operating
22 loss carryback, or (b) an increase or decrease in federal or New York
23 state taxable income or other basis of tax or federal or New York state
24 tax, or (c) a federal or New York state change or correction or renego-
25 tiation, or computation or recomputation of tax, which is treated in the
26 same manner as if it were a deficiency for federal or New York state
27 income tax purposes, see paragraph (g) of subdivision three of section
28 11-674 of this subchapter.

29 2. Extension of time by agreement. If any agreement under the
30 provisions of paragraph (b) of subdivision three of section 11-674 of
31 this subchapter, extending the period of assessment of tax, is made
32 within the period prescribed in subdivision one of this section for the
33 filing of a claim for credit or refund, the period for filing a claim
34 for credit or refund, or for making credit or refund if no claim is
35 filed, shall not expire prior to six months after the expiration of the
36 period within which an assessment may be made pursuant to the agreement
37 or any extension thereof. The amount of such credit or refund shall not
38 exceed the portion of the tax paid after the execution of the agreement
39 and before the filing of the claim or the making of the credit or
40 refund, as the case may be, plus the portion of the tax paid within the
41 period which would be applicable under subdivision one if a claim had
42 been filed on the date the agreement was executed.

43 3. Notice of change or correction of federal or New York state income
44 or other basis of tax. If a taxpayer is required by subchapter two,
45 three or three-A of this chapter to file a report or amended return in
46 respect of (a) a decrease or increase in federal or New York state taxa-
47 ble income, alternative minimum taxable income or other basis of tax or
48 federal or New York state tax, (b) a federal or New York state change or
49 correction or renegotiation, or computation or recomputation of tax,
50 which is treated in the same manner as if it were an overpayment for
51 federal or New York state income tax purposes, claim for credit or
52 refund of any resulting overpayment of tax shall be filed by the taxpay-
53 er within two years from the time such report or amended return was
54 required to be filed with the commissioner of finance. If the report or
55 amended return required by subchapter two, three or three-A of this
56 chapter is not filed within the ninety day period therein specified, no

1 interest shall be payable on any claim for credit or refund of the over-
2 payment attributable to the federal or New York state change or
3 correction. The amount of such credit or refund: (c) shall, (i) for
4 taxable years beginning before January first, two thousand fifteen, be
5 computed without change of the allocation of income or capital upon
6 which the taxpayer's return, or any additional assessment, was based,
7 and, (ii) for taxable years beginning on or after January first, two
8 thousand fifteen, be computed without change of the allocation of
9 income or capital upon which the taxpayer's return, or any additional
10 assessment, was based to the extent that the claim for refund arises
11 from a decrease or increase in federal taxable income or other basis
12 of tax or federal tax, or from a federal change, correction, renegoti-
13 ation, computation or recomputation of tax, which is treated in the
14 same manner as if it were an overpayment for federal income tax
15 purposes, and (d) shall not exceed the amount of the reduction in tax
16 attributable to such decrease or increase in federal or New York state
17 taxable income, alternative minimum taxable income or other basis of tax
18 or federal or New York state tax or to such federal or New York state
19 change or correction or renegotiation, or computation or recomputation
20 of tax.

21 This subdivision shall not affect the time within which or the amount
22 for which a claim for credit or refund may be filed apart from this
23 subdivision.

24 4. Overpayment attributable to net operating loss carryback or capital
25 loss carryback. A claim for credit or refund of so much of an overpay-
26 ment under subchapter two or three-A of this chapter as is attributable
27 to the application to the taxpayer of a net operating loss carryback or
28 a capital loss carryback shall be filed within three years from the time
29 the return was due, including extensions thereof, for the taxable year
30 of the loss, or within the period prescribed in subdivision two of this
31 section in respect of such taxable year, or within the period prescribed
32 in subdivision three of this section, where applicable, in respect to
33 the taxable year to which the net operating loss or capital loss is
34 carried back, whichever expires the latest. Where such claim for credit
35 or refund is filed after the expiration of the period prescribed in
36 subdivision one or in subdivision two of this section where applicable,
37 in respect to the taxable year to which the net operating loss is
38 carried back, the amount of such credit or refund shall be computed
39 without change of the allocation of income or capital upon which the
40 taxpayer's return, or any additional assessment, was based.

41 5. Failure to file claim within prescribed period. No credit or
42 refund shall be allowed or made, except as provided in subdivision six
43 of this section or subdivision four of section 11-681 of this subchap-
44 ter, after the expiration of the applicable period of limitation speci-
45 fied in this subchapter, unless a claim for credit or refund is filed by
46 the taxpayer within such period. Any later credit shall be void and
47 any later refund erroneous. No period of limitations specified in any
48 other law shall apply to the recovery by a taxpayer of moneys paid in
49 respect of taxes under the named subchapters.

50 6. Effect of a petition to tax appeals tribunal. If a notice of defi-
51 ciency for a taxable year has been mailed to the taxpayer under section
52 11-672 of this subchapter and if the taxpayer files a timely petition
53 with the tax appeals tribunal under section 11-680 of this subchapter,
54 the tax appeals tribunal may determine that the taxpayer has made an
55 overpayment for such year, whether or not it also determines a deficien-
56 cy for such year. No separate claim for credit or refund for such year

1 shall be filed, and no credit or refund for such year shall be allowed
2 or made, except:

3 (a) as to overpayment determined by a decision of the tax appeals
4 tribunal which has become final; and

5 (b) as to any amount collected in excess of an amount computed in
6 accordance with the decision of the tax appeals tribunal which has
7 become final; and

8 (c) as to any amount collected after the period of limitation upon the
9 making of levy for collection has expired; and

10 (d) as to any amount claimed as a result of a change or correction
11 described in subdivision three of this section.

12 7. Limit on amount of credit or refund. The amount of overpayment
13 determined under subdivision six of this section shall, when the deci-
14 sion of the tax appeals tribunal has become final, be credited or
15 refunded in accordance with subdivision one of section 11-677 of this
16 subchapter and shall not exceed the amount of tax which the tax appeals
17 tribunal determines as part of its decision was paid:

18 (a) after the mailing of the notice of deficiency, or

19 (b) within the period which would be applicable under subdivision one,
20 two or three of this section, if on the date of the mailing of the
21 notice of deficiency a claim had been filed, whether or not filed, stat-
22 ing the ground upon which the tax appeals tribunal finds that there is
23 an overpayment.

24 For special restriction on credit or refund in a proceeding on a peti-
25 tion for redetermination of a deficiency where the notice of deficiency
26 is issued as a result of (i) a net operating loss carryback, or (ii) an
27 increase or decrease in federal or New York state taxable income or
28 other basis of tax or federal or New York state tax, or (iii) a federal
29 or New York state change or correction or renegotiation, or computation
30 or recomputation of tax, which is treated in the same manner as if it
31 were a deficiency for federal or New York state income tax purposes, see
32 paragraph (g) of subdivision three of section 11-674 of this subchapter.

33 8. Early return. For purposes of this section, any return filed
34 before the last day prescribed for the filing thereof shall be consid-
35 ered as filed on such last day, determined without regard to any exten-
36 sion of time granted the taxpayer.

37 9. Prepaid tax. For purposes of this section, any tax paid by the
38 taxpayer before the last day prescribed for its payment, including any
39 amount paid by the taxpayer as estimated tax for a taxable year, shall
40 be deemed to have been paid by it on the fifteenth day of the third
41 month following the close of the taxable year the income of which is the
42 basis for tax under subchapter two, three or three-A of this chapter, or
43 on the last day prescribed in part one of subchapter three or subchapter
44 four of this chapter for the filing of a final return for such taxable
45 year, or portion thereof, determined in all cases without regard to any
46 extension of time granted the taxpayer.

47 10. Cross reference. For provision barring refund of overpayment
48 credited against tax of a succeeding year, see subdivision two of
49 section 11-677 of this subchapter.

50 11. Notice of change or correction of sales and compensating use tax
51 liability. (a) If a taxpayer is required by subchapter two or three-A of
52 this chapter to file a report or amended return in respect of a change
53 or correction of its sales and compensating use tax liability, claim for
54 credit or refund of any resulting overpayment of tax shall be filed by
55 the taxpayer within two years from the time such report or amended
56 return was required to be filed with the commissioner of finance. The

1 amount of such credit or refund shall be computed without change of the
2 allocation of income or capital upon which the taxpayer's return, or any
3 additional assessment, was based, and shall not exceed the amount of the
4 reduction in tax attributable to such change or correction of sales and
5 compensating use tax liability.

6 (b) This subdivision shall not affect the time within which or the
7 amount for which a claim for credit or refund may be filed apart from
8 this subdivision.

9 § 11-679 Interest on overpayment. 1. General. Notwithstanding the
10 provisions of section three-a of the general municipal law, interest
11 shall be allowed and paid as follows at the overpayment rate set by the
12 commissioner of finance pursuant to section 11-687 of this subchapter,
13 or, if no rate is set, at the rate of six percent per annum upon any
14 overpayment in respect to the tax imposed by any of the named subchap-
15 ters:

16 (a) from the date of the overpayment to the due date of an amount
17 against which a credit is taken;

18 (b) from the date of the overpayment to a date, to be determined by
19 the commissioner of finance, preceding the date of a refund check by not
20 more than thirty days, whether or not such refund check is accepted by
21 the taxpayer after tender of such check to the taxpayer. The acceptance
22 of such check shall be without prejudice to any right of the taxpayer to
23 claim any additional overpayment and interest thereon.

24 (c) Late and amended returns and claims for credit or refund.
25 Notwithstanding paragraph (a) or (b) of this subdivision, in the case of
26 an overpayment claimed on a return of tax which is filed after the last
27 date prescribed for filing such return, determined with regard to exten-
28 sions, or claimed on an amended return of tax or claimed on a claim for
29 credit or refund, no interest shall be allowed or paid for any day
30 before the date on which such return or claim is filed.

31 (d) Interest on certain refunds. To the extent provided for in regu-
32 lations promulgated by the commissioner of finance, if an item of
33 income, gain, loss, deduction or credit is changed from the taxable year
34 or period in which it is reported to the taxable year or period in which
35 it belongs and the change results in an underpayment in a taxable year
36 or period and an overpayment in some other taxable year or period, the
37 provisions of paragraph (c) of this subdivision with respect to an over-
38 payment shall not be applicable to the extent that the limitation in
39 such paragraph on the right to interest would result in a taxpayer not
40 being allowed interest for a length of time with respect to an overpay-
41 ment while being required to pay interest on an equivalent amount of the
42 related underpayment. However, this paragraph shall be not construed as
43 limiting or mitigating the effect of any statute of limitations or any
44 other provision of law relating to the authority of such commissioner to
45 issue a notice of deficiency or to allow a credit or refund of an over-
46 payment.

47 (e) Amounts of less than one dollar. No interest shall be allowed or
48 paid if the amount thereof is less than one dollar.

49 2. Advance payment of tax and estimated tax. The provisions of subdi-
50 visions eight and nine of section 11-678 of this subchapter applicable
51 in determining the date of payment of tax for purposes of determining
52 the period of limitations on credit or refund, shall be applicable in
53 determining the date of payment for purposes of this section.

54 3. Tax refund within three months of claim for overpayment. If any
55 overpayment of tax imposed by any of the named subchapters is credited
56 or refunded within three months after the last date prescribed, or

1 permitted by extension of time, for filing the return of such tax on
2 which such overpayment was claimed or within three months after such
3 return was filed, whichever is later, or within three months after an
4 amended return was filed claiming such overpayment or within three
5 months after a claim for credit or refund was filed on which such over-
6 payment was claimed, no interest shall be allowed under this section on
7 any such overpayment. For purposes of this subdivision, any amended
8 return or claim for credit or refund filed before the last day
9 prescribed, or permitted by extension of time, for the filing of the
10 return of tax for such year or period shall be considered as filed on
11 such last day.

12 4. Refund of tax caused by carryback. For purposes of this section,
13 if any overpayment of tax imposed by subchapter two or three-A of this
14 chapter results from a carryback of a net operating loss or a net capi-
15 tal loss, such overpayment shall be deemed not to have been made prior
16 to the filing date for the taxable year in which such net operating loss
17 or net capital loss arises. Such filing date shall be determined without
18 regard to extensions of time to file. For purposes of subdivision three
19 of this section any overpayment described herein shall be treated as an
20 overpayment for the loss year and such subdivision shall be applied with
21 respect to such overpayment by treating the return for the loss year as
22 not filed before claim for such overpayment is filed. The term "loss
23 year" means the taxable year in which such loss arises.

24 5. No interest until return in processible form.

25 (a) For purposes of subdivisions one and three of this section, a
26 return shall not be treated as filed until it is filed in processible
27 form.

28 (b) For purposes of paragraph (a) of this subdivision, a return is in
29 a processible form if:

30 (A) such return is filed on a permitted form, and

31 (B) such return contains:

32 (i) the taxpayer's name; address, and identifying number and the
33 required signatures, and

34 (ii) sufficient required information, whether on the return or on
35 required attachments, to permit the mathematical verification of tax
36 liability shown on the return.

37 6. Cross reference. For provision with respect to interest after
38 failure to file a report of federal or New York state change or
39 correction or amended return under subchapter two, three or three-A, see
40 subdivision three of section 11-678 of this subchapter.

41 § 11-680 Petition to tax appeals tribunal. 1. General. The form of a
42 petition to the tax appeals tribunal, and further proceedings before the
43 tax appeals tribunal in any case initiated by the filing of a petition,
44 shall be governed by such rules as the tax appeals tribunal shall
45 prescribe. No petition shall be denied in whole or in part without
46 opportunity for a hearing on reasonable prior notice. Such hearing and
47 any appeal to the tribunal sitting en banc from the decision rendered in
48 such hearing shall be conducted in the manner and subject to the
49 requirements prescribed by the tax appeals tribunal pursuant to sections
50 one hundred sixty-eight through one hundred seventy-two of the charter
51 of the preceding municipality as it existed January first, nineteen
52 hundred ninety-four. A decision of the tax appeals tribunal shall be
53 rendered, and notice thereof shall be given, in the manner provided by
54 section one hundred seventy-one of the charter of the preceding munici-
55 pality as it existed January first, nineteen hundred ninety-four.

1 2. Petition for redetermination of a deficiency. Within ninety days,
2 or one hundred fifty days if the notice is addressed to a taxpayer whose
3 last known address is outside of the United States, after the mailing of
4 the notice of deficiency authorized by section 11-672 of this subchap-
5 ter, or if the commissioner of finance has established a conciliation
6 procedure pursuant to section 11-124 of this title and the taxpayer has
7 requested a conciliation conference in accordance therewith, after nine-
8 ty days from the mailing of the conciliation decision or the date of the
9 commissioner's confirmation of the discontinuance of the conciliation
10 proceeding, the taxpayer may file a petition with the tax appeals tribu-
11 nal for redetermination of the deficiency. Such petition may also assert
12 a claim for refund for the same taxable year or years, subject to the
13 limitations of subdivision seven of section 11-678 of this subchapter.
14 For special restriction where the notice of deficiency relates to a
15 proposed assessment made as a result of: (a) a net operating loss carry-
16 back or a capital loss carryback, (b) an increase or decrease in federal
17 or New York state taxable income or other basis of tax or federal or New
18 York state tax, or (c) a federal or New York state change or correction
19 or renegotiation, or computation or recomputation of tax, which is
20 treated in the same manner as if it were a deficiency for federal or New
21 York state income tax purposes, see paragraph (g) of subdivision three
22 of section 11-674 of this subchapter.

23 3. Petition for refund. A taxpayer may file a petition with the tax
24 appeals tribunal for the amounts asserted in a claim for refund if:

25 (a) the taxpayer has filed a timely claim for refund with the commis-
26 sioner of finance,

27 (b) the taxpayer has not previously filed with the tax appeals tribu-
28 nal a timely petition under subdivision two of this section for the same
29 taxable year unless the petition under this subdivision relates to a
30 separate claim for credit or refund properly filed under subdivision six
31 of section 11-678 of this subchapter, and

32 (c) either: (1) six months have expired since the claim was filed, or
33 (2) the commissioner of finance has mailed to the taxpayer, by regis-
34 tered or certified mail, a notice of disallowance of such claim in whole
35 or in part.

36 No petition under this subdivision shall be filed more than two years
37 after the date of mailing of a notice of disallowance, unless prior to
38 the expiration of such two year period it has been extended by written
39 agreement between the taxpayer and the commissioner of finance. If a
40 taxpayer files a written waiver of the requirement that the taxpayer be
41 mailed a notice of disallowance, the two year period prescribed by this
42 subdivision for filing a petition for refund shall begin on the date
43 such waiver is filed.

44 (d) If the commissioner of finance has established a conciliation
45 procedure pursuant to section 11-124 of this title, a taxpayer which is
46 eligible to file a petition for refund with the tax appeals tribunal
47 pursuant to this subdivision may request a conciliation conference prior
48 to filing such petition, provided the request is made within the time
49 prescribed for filing the petition. Notwithstanding anything in this
50 subdivision to the contrary, if the taxpayer has requested a concil-
51 iation conference in accordance with the procedure established pursuant
52 to section 11-124 of this title, a petition for refund may be filed no
53 later than ninety days from the mailing of the conciliation decision or
54 the date of the commissioner's confirmation of the discontinuance of the
55 conciliation proceeding.

56 4. Assertion of deficiency after filing petition.

1 (a) Petition for redetermination of deficiency. If a taxpayer files
2 with the tax appeals tribunal a petition for redetermination of a defi-
3 ciency, the tax appeals tribunal shall have power to determine a greater
4 deficiency than asserted in the notice of deficiency and to determine if
5 there should be assessed any addition to tax or penalty provided in
6 section 11-676 of this subchapter, if claim therefor is asserted at or
7 before the hearing under rules of the tax appeals tribunal.

8 (b) Petition for refund. If the taxpayer files with the tax appeals
9 tribunal a petition for credit or refund for a taxable year, the tax
10 appeals tribunal may:

11 (1) determine a deficiency for such year as to any amount of deficien-
12 cy asserted at or before the hearing under rules of the tax appeals
13 tribunal and within the period in which an assessment would be timely
14 under section 11-674 of this subchapter, or

15 (2) deny so much of the amount for which credit or refund is sought in
16 the petition, as is offset by other issues pertaining to the same taxa-
17 ble year which are asserted at or before the hearing under rules of the
18 tax appeals tribunal.

19 (c) Opportunity to respond. A taxpayer shall be given a reasonable
20 opportunity to respond to any matters asserted by the commissioner of
21 finance under this subdivision.

22 (d) Restriction on further notices of deficiency. If the taxpayer
23 files a petition with the tax appeals tribunal under this section, no
24 notice of deficiency under section 11-672 of this subchapter may there-
25 after be issued by the commissioner of finance for the same taxable
26 year, except in case of fraud or with respect to an increase or decrease
27 in federal or New York state taxable income, alternative minimum taxable
28 income or other basis of tax or federal or New York state tax or a
29 federal or New York state change or correction or renegotiation, or
30 computation or recomputation of tax, which is treated in the same manner
31 as if it were a deficiency for federal or New York state income tax
32 purposes, required to be reported under subchapter two, three or three-A
33 of this chapter or with respect to a state change or correction of sales
34 and compensating use tax liability required to be reported under
35 subchapter two or three-A of this chapter.

36 5. Burden of proof. In any case before the tax appeals tribunal under
37 this subchapter, the burden of proof shall be upon the petitioner except
38 for the following issues, as to which the burden of proof shall be upon
39 the commissioner of finance:

40 (a) whether the petitioner has been guilty of fraud with intent to
41 evade tax;

42 (b) whether the petitioner is liable as the transferee of property of
43 a taxpayer, but not to show that the taxpayer was liable for the tax;

44 (c) whether the petitioner is liable for any increase in a deficiency
45 where such increase is asserted initially after a notice of deficiency
46 was mailed and a petition under this section filed, unless such increase
47 in deficiency is the result of an increase or decrease in federal or New
48 York state taxable income, alternative minimum taxable income or other
49 basis of tax or federal or New York state tax or a federal or New York
50 state change or correction or renegotiation, or computation or recompu-
51 tation of tax, which is treated in the same manner as if it were a defi-
52 ciency for federal or New York state income tax purposes, required to be
53 reported under subchapter two, three or three-A of this chapter, and of
54 which increase, decrease, change or correction or renegotiation, or
55 computation or recomputation, the commissioner of finance had no notice
56 at the time he or she mailed the notice of deficiency or unless such

1 increase in deficiency is the result of a change or correction of sales
2 and compensating use tax liability required to be reported under
3 subchapter two or three-A of this chapter, and of which change or
4 correction the commissioner of finance had no notice at the time he or
5 she mailed the notice of deficiency; and

6 (d) whether any person is liable for a penalty under subdivision
7 twelve of section 11-676 of this subchapter.

8 6. Evidence of related federal or state determination. Evidence of a
9 federal or state determination relating to issues raised in a case
10 before the tax appeals tribunal under this section shall be admissible,
11 under rules established by the tax appeals tribunal.

12 7. Jurisdiction over other years. The tax appeals tribunal shall
13 consider such facts with relation to the taxes for other years as may be
14 necessary correctly to determine the tax for the taxable year, but in so
15 doing shall have no jurisdiction to determine whether or not the tax for
16 any other year has been overpaid or underpaid.

17 § 11-681 Review of tax appeals tribunal's decision. 1. General. A
18 decision of the tax appeals tribunal sitting en banc shall be subject to
19 judicial review at the instance of any taxpayer affected thereby in the
20 manner provided by law for the review of a final decision or action of
21 administrative agencies of the city. An application by a taxpayer for
22 such review must be made within four months after notice of the decision
23 is sent by certified mail, return receipt requested, to the taxpayer and
24 the commissioner of finance.

25 2. Judicial review exclusive remedy. The review of a decision of the
26 tax appeals tribunal provided by this section shall be the exclusive
27 remedy available to any taxpayer for the judicial determination of the
28 liability of the taxpayer for the taxes imposed by the named subchap-
29 ters.

30 3. Assessment pending review; review bond. Irrespective of any
31 restrictions on the assessment and collection of deficiencies, the
32 commissioner of finance may assess a deficiency determined by the tax
33 appeals tribunal in a decision rendered pursuant to section one hundred
34 seventy-one of the charter of the preceding municipality as it existed
35 January first, nineteen hundred ninety-four after the expiration of the
36 period specified in subdivision one, notwithstanding that an application
37 for judicial review in respect of such deficiency has been duly made by
38 the taxpayer unless the taxpayer, at or before the time the taxpayer's
39 application for review is made, has paid the deficiency, has deposited
40 with the commissioner of finance the amount of the deficiency, or has
41 filed with the commissioner of finance a bond, which may be a jeopardy
42 bond under subdivision eight of section 11-685 of this subchapter, in
43 the amount of the portion of the deficiency, including interest and
44 other amounts, in respect of which the application for review is made
45 and all costs and charges which may accrue against the taxpayer in the
46 prosecution of the proceeding, including costs of all appeals, and with
47 surety approved by a justice of the supreme court of the state, condi-
48 tioned upon the payment of the deficiency, including interest and other
49 amounts, as finally determined and such costs and charges. If, as a
50 result of a waiver of the restrictions on the assessment and collection
51 of a deficiency, any part of the amount determined by the tax appeals
52 tribunal is paid after the filing of the review bond, such bond shall,
53 at the request of the taxpayer, be proportionately reduced.

54 4. Credit, refund or abatement after review. If the amount of a defi-
55 ciency determined by the tax appeals tribunal is disallowed in whole or
56 in part by the court of review, the amount so disallowed shall be cred-

1 ited or refunded to the taxpayer, without the making of claim therefor,
2 or, if payment has not been made, shall be abated.

3 5. Date of finality of tax appeals tribunal decision. A decision of
4 the tax appeals tribunal shall become final upon the expiration of the
5 period specified in subdivision one of this section for making an appli-
6 cation for review, if no such application has been duly made within such
7 time, or if such application has been duly made, upon expiration of the
8 time for all further judicial review, or upon the rendering by the tax
9 appeals tribunal of a decision in accordance with the mandate of the
10 court on review provided, however, for the purpose of making an applica-
11 tion for review, the decision of the tax appeals tribunal shall be
12 deemed final on the date the notice of decision is sent by certified
13 mail to the taxpayer and the commissioner of finance.

14 § 11-682 Mailing rules; holidays; miscellaneous. 1. Timely mailing.
15 (a) If any return, declaration of estimated tax, claim, statement,
16 notice, petition, or other document required to be filed, or any payment
17 required to be made, within a prescribed period or on or before a
18 prescribed date under authority of any provision of this subchapter or
19 of the named subchapters is, after such period or such date, delivered
20 by United States mail to the commissioner of finance, tax appeals tribu-
21 nal, bureau, office, officer or person with which or with whom such
22 document is required to be filed, or to which or to whom such payment is
23 required to be made, the date of the United States postmark stamped on
24 the envelope shall be deemed to be the date of delivery. This subdivi-
25 sion shall apply only if the postmark date falls within the prescribed
26 period or on or before the prescribed date for the filing of such docu-
27 ment, or for making the payment, including any extension granted for
28 such filing or payment, and only if such document or payment was depos-
29 ited in the mail, postage prepaid, properly addressed to the commission-
30 er of finance, tax appeals tribunal, bureau, office, officer or person
31 with which or with whom the document is required to be filed or to which
32 or to whom such payment is required to be made. If any document is sent
33 by United States registered mail, such registration shall be prima facie
34 evidence that such document was delivered to the commissioner of
35 finance, tax appeals tribunal, bureau, office, officer or person to
36 which or to whom addressed. To the extent that the commissioner of
37 finance or, where relevant, the tax appeals tribunal shall prescribe by
38 regulation, certified mail may be used in lieu of registered mail under
39 this subdivision. Except as provided in paragraph (b) of this subdivi-
40 sion, this subdivision shall apply in the case of postmarks not made by
41 the United States postal service only if and to the extent provided by
42 regulations of the commissioner of finance or, where relevant, the tax
43 appeals tribunal.

44 (b) (i) Any reference in paragraph (a) of this subdivision to the
45 United States mail shall be treated as including a reference to any
46 delivery service designated by the secretary of the treasury of the
47 United States pursuant to section seventy-five hundred two of the inter-
48 nal revenue code and any reference in paragraph (a) of this subdivision
49 to a United States postmark shall be treated as including a reference to
50 any date recorded or marked in the manner described in section seventy-
51 five hundred two of the internal revenue code by a designated delivery
52 service. If the commissioner of finance finds that any delivery service
53 designated by such secretary is inadequate for the needs of the city,
54 the commissioner may withdraw such designation for purposes of this
55 title. The commissioner may also designate additional delivery services
56 meeting the criteria of section seventy-five hundred two of the internal

1 revenue code for purposes of this title, or may withdraw any such design-
2 nation if the commissioner of finance finds that a delivery service so
3 designated is inadequate for the needs of the city. Any reference in
4 paragraph (a) of this subdivision to the United States mail shall be
5 treated as including a reference to any delivery service designated by
6 the commissioner of finance and any reference in paragraph (a) of this
7 subdivision to a United States postmark shall be treated as including a
8 reference to any date recorded or marked in the manner described in
9 section seventy-five hundred two of the internal revenue code by a
10 delivery service designated by the commissioner of finance, provided,
11 however, any withdrawal of designation or additional designation by the
12 commissioner of finance shall not be effective for purposes of service
13 upon the tax appeals tribunal, unless and until such withdrawal of
14 designation or additional designation is ratified by the president of
15 the tax appeals tribunal.

16 (ii) Any equivalent of registered or certified mail designated by the
17 United States secretary of the treasury, or as may be designated by the
18 commissioner of finance pursuant to the same criteria used by such
19 secretary for such designations pursuant to section seventy-five hundred
20 two of the internal revenue code, shall be included within the meaning
21 of registered or certified mail as used in paragraph (a) of this subdivi-
22 sion. If the commissioner of finance finds that any equivalent of
23 registered or certified mail designated by such secretary or the commis-
24 sioner of finance is inadequate for the needs of the city, the commis-
25 sioner of finance may withdraw such designation for purposes of this
26 title, provided, however, any withdrawal of designation or additional
27 designation by the commissioner of finance shall not be effective for
28 purposes of service upon the tax appeals tribunal, unless and until such
29 withdrawal of designation or additional designation is ratified by the
30 president of the tax appeals tribunal.

31 2. Last known address. For purposes of this subchapter, a taxpayer's
32 last known address shall be the address given in the last return filed
33 by it, unless subsequently to the filing of such return the taxpayer
34 shall have notified the commissioner of finance of a change of address.

35 3. Last day a Saturday, Sunday or legal holiday. When the last day
36 prescribed under authority of this subchapter or the named subchapters,
37 including any extension of time, for performing any act falls on a
38 Saturday, Sunday, or legal holiday in the state, the performance of such
39 act shall be considered timely if it is performed on the next succeeding
40 day which is not a Saturday, Sunday or legal holiday.

41 4. Certificate; unfiled return. For purposes of this subchapter and
42 sections one hundred sixty-eight through one hundred seventy-two of the
43 charter of the preceding municipality as it existed January first, nine-
44 teen hundred ninety-four, the certificate of the commissioner of finance
45 to the effect that a tax has not been paid, that a return or declaration
46 of estimated tax has not been filed, or that information has not been
47 supplied, as required by or under the provisions of this chapter, shall
48 be prima facie evidence that such tax has not been paid, that such
49 return or declaration has not been filed, or that such information has
50 not been supplied.

51 § 11-683 Collection, levy and liens. 1. Collection procedures. The
52 taxes imposed by the named subchapters shall be collected by the commis-
53 sioner of finance, and he or she may establish the mode or time for the
54 collection of any amount due him or her thereunder if not otherwise
55 specified. The commissioner of finance shall, upon request, give a
56 receipt for any sum collected thereunder. The commissioner of finance

1 may authorize banks or trust companies which are depositaries or finan-
2 cial agents of the city to receive and give a receipt for any tax
3 imposed under the named subchapters in such manner, at such times, and
4 under such conditions as the commissioner of finance may prescribe; and
5 the commissioner of finance shall prescribe the manner, times and condi-
6 tions under which the receipt of such tax by such banks and trust compa-
7 nies is to be treated as payment of such tax to the commissioner of
8 finance.

9 2. Notice and demand for tax. The commissioner of finance shall as
10 soon as practicable give notice to each taxpayer liable for any amount
11 of tax, addition to tax, penalty or interest, which has been assessed
12 but remains unpaid, stating the amount and demanding payment thereof.
13 Such notice shall be left at the principal office of the taxpayer in the
14 city or shall be sent by mail to such taxpayer's last known address.
15 Except where the commissioner of finance determines that collection
16 would be jeopardized by delay, if any tax is assessed prior to the last
17 date, including any date fixed by extension, prescribed for payment of
18 such tax, payment of such tax shall not be demanded until after such
19 date.

20 3. Issuance of warrant after notice and demand. If any corporation or
21 other person liable under the named subchapters for the payment of any
22 tax, addition to tax, penalty or interest neglects or refuses to pay the
23 same within ten days after notice and demand therefor is given to such
24 corporation or other person under subdivision two of this section, the
25 commissioner of finance may within six years after the date of such
26 assessment issue a warrant directed to the sheriff of any county of the
27 state, or to any officer or employee of the department of finance,
28 commanding him or her to levy upon and sell the real and personal prop-
29 erty of such corporation or other person for the payment of the amount
30 assessed, with the cost of executing the warrant, and to return such
31 warrant to the commissioner of finance, and pay to the commissioner the
32 money collected by virtue thereof within sixty days after the receipt of
33 the warrant. If the commissioner of finance finds that the collection
34 of the tax or other amount is in jeopardy, notice and demand for immedi-
35 ate payment of such tax may be made by the commissioner of finance and
36 upon failure or refusal to pay such tax or other amount the commissioner
37 of finance may issue a warrant without regard to the ten-day period
38 provided in this subdivision.

39 4. Copy of warrant to be filed and lien to be created. Any sheriff or
40 officer or employee who receives a warrant under subdivision three of
41 this section shall within five days thereafter file a copy with the
42 clerk of the appropriate county. The clerk shall thereupon enter in the
43 judgment docket, in the column for judgment debtors, the name of the
44 taxpayer mentioned in the warrant, and in appropriate columns the tax or
45 other amounts for which the warrant is issued and the date when such
46 copy is filed; and such amount shall thereupon be a binding lien upon
47 the real, personal and other property of the taxpayer.

48 5. Judgment. When a warrant has been filed with the county clerk the
49 commissioner of finance shall, on behalf of the city, be deemed to have
50 obtained judgment against the taxpayer for the tax or other amounts.

51 6. Execution. The sheriff or officer or employee shall thereupon
52 proceed upon the judgment in all respects, with like effect, and in the
53 same manner prescribed by law in respect to executions issued against
54 property upon judgments of a court of record, and a sheriff shall be
55 entitled to the same fees for his or her services in executing the
56 warrant, to be collected in the same manner. An officer or employee of

1 the department of finance may proceed in any county or counties of this
2 state and shall have all the powers of execution conferred by law upon
3 sheriffs, but shall be entitled to no fee or compensation in excess of
4 actual expenses paid in connection with the execution of the warrant.

5 7. Foreign corporations. Where a notice and demand under subdivision
6 two of this section shall have been given to a foreign corporation or
7 other person who is not then a resident, and it appears to the commis-
8 sioner of finance that it is not practicable to find in the state prop-
9 erty of such foreign corporation or nonresident person sufficient to pay
10 the entire balance of tax or other amount owing by such foreign corpo-
11 ration or nonresidential person, the commissioner of finance may, in
12 accordance with subdivision three of this section, issue a warrant
13 directed to an officer or employee of the department of finance, a copy
14 of which warrant shall be mailed by certified or registered mail to such
15 foreign corporation or nonresident person at its last known address,
16 subject to the rules of mailing provided in subdivision one of section
17 11-672 of this subchapter. Such warrant shall command the officer or
18 employee to proceed in Richmond county, and he or she shall, within five
19 days after receipt of the warrant, file the warrant and obtain a judg-
20 ment in accordance with this section. Thereupon the commissioner of
21 finance may authorize the institution of any action or proceeding to
22 collect or enforce the judgment in any place and by any procedure that a
23 civil judgment of the supreme court of the state of New York could be
24 collected or enforced. The commissioner of finance may also, in his or
25 her discretion, designate agents or retain counsel for the purpose of
26 collecting, outside the state, any unpaid taxes, additions to tax,
27 penalties or interest which have been assessed under this subchapter or
28 under any of the named subchapters, against foreign corporations or
29 other non-resident persons, may fix the compensation of such agents and
30 counsel to be paid out of money appropriated or otherwise lawfully
31 available for payment thereof, and may require of them bonds or other
32 security for the faithful performance of their duties, in such form and
33 in such amount as the commissioner of finance shall deem proper and
34 sufficient.

35 8. Action by city for recovery of taxes. Action may be brought by the
36 corporation counsel of the city at the instance of the commissioner of
37 finance to recover the amount of any unpaid taxes, additions to tax,
38 penalties or interest which have been assessed under this subchapter or
39 under the named subchapters within six years prior to the date the
40 action is commenced.

41 9. Release of lien. The commissioner of finance, if he or she finds
42 that the interests of the city will not thereby be jeopardized, and upon
43 such conditions as it may require, may release any property from the
44 lien of any warrant filed under subdivision four or seven of this
45 section for unpaid taxes, additions to tax, penalties and interest filed
46 pursuant to this section, and such release or vacating of the warrant
47 may be recorded in the office of any recording officer in which such
48 warrant has been filed. The clerk shall thereupon cancel and discharge
49 as of the original date of docketing the vacated warrant.

50 10. Lien from due date of return. (a) In addition to any other lien
51 provided for in this section, each tax imposed by the named subchapters
52 shall become a lien on the date on which the return is required to be
53 filed, without regard to any extension of time for filing such return,
54 except that such tax shall become a lien not later than the date the
55 taxpayer ceases to be subject to the tax imposed by any of the named
56 subchapters, or to do business in this state in a corporate or organized

1 capacity. Each such tax shall be a lien and binding upon the real and
2 personal property of the taxpayer, or of a transferee liable to pay the
3 same, until the same is paid in full, except that no lien for any addi-
4 tional tax assessed pursuant to this subchapter shall be enforceable
5 against property which prior to the issuance to the taxpayer of a notice
6 of deficiency under section 11-672 of this subchapter had been trans-
7 ferred in good faith to a bona fide transferee for value. But the lien
8 of each such tax shall be subject to the lien of any mortgage indebt-
9 edness existing against real property previous to the time when the tax
10 became a lien and where such mortgage indebtedness has been incurred in
11 good faith and was not given, directly or indirectly, to any officer or
12 stockholder of the corporation owning such real property, whether as a
13 purchase money mortgage or otherwise, and shall also be subject to the
14 lien of local taxes and assessments, without regard to when the lien for
15 such taxes and assessments may have accrued. If the return is filed and
16 the tax shown on the report to be due is paid on or before the date on
17 which the report is required to be filed, without regard to any exten-
18 sions of time for filing such report, the lien shall not be enforceable
19 against the interest of any purchaser or mortgagee in property which is
20 thereafter, but prior to the issuance to the taxpayer of a notice of
21 deficiency under section 11-672 of this subchapter transferred to a bona
22 fide purchaser for value, or mortgaged where the mortgage indebtedness
23 is incurred in good faith and the mortgage is not given, directly or
24 indirectly, to any officer or stockholder of the corporation. In any
25 action to foreclose any such mortgage, or to foreclose the lien of local
26 taxes or assessments, to which the people of the state, or the city
27 shall have been made a party defendant by reason of the existence of a
28 lien for any such tax, or if no such tax was due or was a lien at the
29 time of the commencement of such action and the filing of the notice of
30 pendency thereof but such a tax becomes due or becomes a lien subsequent
31 to the time of the commencement of such action and the filing of the
32 notice of pendency thereof, such real property shall be sold and
33 conveyed in such action free from any such tax lien, and any such tax
34 lien may become a lien on any surplus moneys which may result from such
35 sale, to be determined in the proceedings for the distribution of such
36 surplus moneys. Where title to real property passes from an individual,
37 or from a corporation owing no tax, to another corporation which is in
38 default for such tax, the lien herein provided shall not be enforceable
39 except as to any equity after the prior mortgage or purchase money mort-
40 gage encumbrance.

41 (b) The commissioner of finance may, upon application made to the
42 commissioner and the payment of a fee of twenty-five dollars, release
43 any real property from the lien under this subdivision, provided payment
44 be made to the commissioner of finance of such a sum as the commissioner
45 of finance shall deem adequate consideration for such release, or depos-
46 it be made of such security or such bond be filed as the commissioner of
47 finance shall deem proper to secure payment of any such tax. The appli-
48 cation for such release shall contain an accurate description of the
49 property to be released together with such information as the commis-
50 sioner of finance may require. Such release may be recorded in any
51 office in which conveyances of real estate are entitled to be recorded.

52 (c) All taxes, additions to tax, penalties and interest which have
53 become a lien under this subdivision shall cease to be a lien after the
54 expiration of twenty years from the date they become due and payable,
55 except that taxes, additions to tax, penalties and interest which have
56 become a lien under this subdivision (1) as to real estate in the hands

1 of persons who are owners thereof who would be purchasers in good faith
2 but for such taxes, additions to tax, penalties or interest and (2) as
3 to the lien on real estate of mortgages held by persons who would be
4 holders thereof in good faith but for such taxes, additions to tax,
5 penalties or interest, as against such purchasers or holders, shall
6 cease to be a lien after the expiration of ten years from the date they
7 become due and payable. The limitations herein provided for shall not
8 apply to any transfer from a corporation to a person or corporation with
9 intent to avoid payment of any taxes, or where with like intent the
10 transfer is made to a grantee corporation, or any subsequent grantee
11 corporation, controlled by such grantor or which has any community of
12 interest with it, either through stock ownership or otherwise.

13 § 11-684 Transferees. 1. General. The liability, at law or in equi-
14 ty, of a transferee of property of a taxpayer for any tax, additions to
15 tax, penalty or interest due the commissioner of finance under this
16 subchapter or under the named subchapters, shall be assessed, paid, and
17 collected in the same manner and subject to the same provisions and
18 limitations as in the case of the tax to which the liability relates,
19 except that the period of limitations for assessment against the trans-
20 feree shall be extended by one year for each successive transfer, in
21 order, from the original taxpayer to the transferee involved, but not by
22 more than three years in the aggregate. The term transferee includes,
23 in case of successive transfers, donee, heir, legatee, devisee, distri-
24 butee, and successor by merger, consolidation or other reorganization.

25 2. Exceptions.

26 (a) If before the expiration of the period of limitations for assess-
27 ment of liability of the transferee, a claim has been filed by the
28 commissioner of finance in any court against the original taxpayer or
29 the last preceding transferee based upon the liability of the original
30 taxpayer, then the period of limitation for assessment of liability of
31 the transferee shall in no event expire prior to one year after such
32 claim has been finally allowed, disallowed or otherwise disposed of.

33 (b) If, before the expiration of the time prescribed in subdivision
34 one or paragraph (a) of this subdivision for the assessment of the
35 liability, the commissioner of finance and the transferee have both
36 consented in writing to its assessment after such time, the liability
37 may be assessed at any time prior to the expiration of the period agreed
38 upon. The period so agreed upon may be extended by subsequent agree-
39 ments in writing made before the expiration of the period previously
40 agreed upon. For the purpose of determining the period of limitation on
41 credit or refund to the transferee or overpayments of tax made by such
42 transferee or overpayments of tax made by the transferor as to which the
43 transferee is legally entitled to credit or refund, such agreement and
44 any extension thereof shall be deemed an agreement and extension thereof
45 referred to in subdivision two of section 11-678 of this subchapter. If
46 the agreement is executed after the expiration of the period of limita-
47 tion for assessment against the original taxpayer, then in applying the
48 limitations under subdivision two of section 11-678 of this subchapter
49 on the amount of the credit or refund, the period specified in subdivi-
50 sion one of section 11-678 of this subchapter shall be increased by the
51 period from the date of such expiration to the date of the agreement.

52 3. Period for assessment against certain transferors. For purposes of
53 this section, if any person is deceased or is a corporation which has
54 terminated its existence, the period of limitation for assessment
55 against such person or corporation shall be the period that would be in
56 effect had death or termination of existence not occurred.

1 4. Evidence. The commissioner of finance shall use his or her powers
2 to make available to the transferee evidence necessary to enable the
3 transferee to determine the liability of the original taxpayer and of
4 any preceding transferees, but without undue hardship to the original
5 taxpayer or preceding transferee. See subdivision five of section
6 11-680 of this subchapter for rule as to burden of proof.

7 § 11-685 Jeopardy assessments. 1. Authority for making. If the commis-
8 sioner of finance believes that the assessment or collection of a defi-
9 ciency will be jeopardized by delay, the commissioner shall, notwith-
10 standing the provisions of section 11-672 of this subchapter immediately
11 assess such deficiency, together with all interest, penalties and addi-
12 tions to tax provided for by law, and notice and demand shall be made by
13 the commissioner of finance for the payment thereof.

14 2. Notice of deficiency. If the jeopardy assessment is made before any
15 notice in respect of the tax to which the jeopardy assessment relates
16 has been mailed under section 11-672 of this subchapter, then the
17 commissioner of finance shall mail a notice under such section within
18 sixty days after the making of the assessment.

19 3. Amount assessable before decision of the tax appeals tribunal. The
20 jeopardy assessment may be made in respect of a deficiency greater or
21 less than that of which notice is mailed to the taxpayer and whether or
22 not the taxpayer has theretofore filed a petition with the tax appeals
23 tribunal. The commissioner of finance may, at any time before tax
24 appeals tribunal renders its decision, abate such assessment, or any
25 unpaid portion thereof, to the extent that the commissioner believes the
26 assessment to be excessive in amount. The tax appeals tribunal may in
27 its decision redetermine the entire amount of the deficiency and of all
28 amounts assessed at the same time in connection therewith.

29 4. Amounts assessable after decision of the tax appeals tribunal. If
30 the jeopardy assessment is made after the decision of the tax appeals
31 tribunal is rendered, such assessment may be made only in respect of the
32 deficiency determined by the tax appeals tribunal in its decision.

33 5. Expiration of right to assess. A jeopardy assessment may not be
34 made after the decision of the tax appeals tribunal has become final or
35 after the taxpayer has made an application for review of the decision of
36 the tax appeals tribunal.

37 6. Collection of unpaid amounts. When a petition has been filed with
38 the tax appeals tribunal and when the amount which should have been
39 assessed has been determined by a decision of the tax appeals tribunal
40 which has become final, then any unpaid portion, the collection of which
41 has been stayed by bond, shall be collected as part of the tax upon
42 notice and demand from the commissioner of finance, and any remaining
43 portion of the assessment shall be abated. If the amount already
44 collected exceeds the amount determined as the amount which should have
45 been assessed, such excess shall be credited or refunded to the taxpayer
46 as provided in section 11-677 of this subchapter without the filing of
47 claim therefor. If the amount determined as the amount which should
48 have been assessed is greater than the amount actually assessed, then
49 the difference shall be assessed and shall be collected as part of the
50 tax upon notice and demand from the tax appeals tribunal.

51 7. Abatement if jeopardy does not exist. The commissioner of finance
52 may abate the jeopardy assessment if the commissioner finds that jeopar-
53 dy does not exist. Such abatement may not be made after a decision of
54 the tax appeals tribunal in respect of the deficiency has been rendered
55 or, if no petition is filed with the tax appeals tribunal, after the
56 expiration of the period for filing such petition. The period of limita-

1 tion on the making of assessments and levy or a proceeding for
2 collection, in respect of any deficiency, shall be determined as if the
3 jeopardy assessment so abated had not been made, except that the running
4 of such period shall in any event be suspended for the period from the
5 date of such jeopardy assessment until the expiration of the tenth day
6 after the day on which such jeopardy assessment is abated.

7 8. Bond to stay collection. The collection of the whole or any amount
8 of any jeopardy assessment may be stayed by filing with the commissioner
9 of finance, within such time as may be fixed by regulation, a bond in an
10 amount equal to the amount as to which the stay is desired, conditioned
11 upon the payment of the amount, together with interest thereon, the
12 collection of which is stayed at the time of which, but for the making
13 of the jeopardy assessment, such amount would be due. Upon the filing
14 of the bond the collection of so much of the amount assessed as is
15 covered by the bond shall be stayed. The taxpayer shall have the right
16 to waive such stay at any time in respect of the whole or any part of
17 the amount covered by the bond, and if as a result of such waiver any
18 part of the amount covered by the bond is paid, then the bond shall at
19 the request of the taxpayer, be proportionately reduced. If any portion
20 of the jeopardy assessment is abated, or if a notice of deficiency under
21 section 11-672 of this subchapter is mailed to the taxpayer in a lesser
22 amount, the bond shall, at the request of the taxpayer, be proportion-
23 ately reduced.

24 9. Petition to tax appeals tribunal. If the bond is given before the
25 taxpayer has filed its petition under section 11-680 of this subchapter,
26 the bond shall contain a further condition that if a petition is not
27 filed within the period provided in such section, then the amount, the
28 collection of which is stayed by the bond, will be paid on notice and
29 demand at any time after the expiration of such period, together with
30 interest thereon from the date of the jeopardy notice and demand to the
31 date of notice and demand under this subdivision. The bond shall be
32 conditioned upon the payment of so much of such assessment, collection
33 of which is stayed by the bond, as is not abated by a decision of the
34 tax appeals tribunal which has become final. If the tax appeals tribunal
35 determines that the amount assessed is greater than the amount which
36 should have been assessed, then the bond shall, at the request of the
37 taxpayer, be proportionately reduced when the decision of the tax
38 appeals tribunal is rendered.

39 10. Stay of sale of seized property pending tax appeals tribunal's
40 decision. Where a jeopardy assessment is made, the property seized for
41 the collection of the tax shall not be sold:

42 (a) if subdivision two of this section is applicable, prior to the
43 issuance of the notice of deficiency and the expiration of the time
44 provided in section 11-680 of this subchapter for filing a petition with
45 the tax appeals tribunal, and

46 (b) if a petition is filed with the tax appeals tribunal, whether
47 before or after the making of such jeopardy assessment, prior to the
48 expiration of the period during which the assessment of the deficiency
49 would be prohibited if subdivision one of this section were not applica-
50 ble.

51 Such property may be sold if the taxpayer consents to the sale, or if
52 the commissioner of finance determines that the expenses of conservation
53 and maintenance will greatly reduce the net proceeds, or if the property
54 is perishable.

55 11. Interest. For the purpose of subdivision one of section 11-675 of
56 this subchapter, the last date prescribed for payment shall be deter-

1 mined without regard to any notice and demand for payment issued under
2 this section prior to the last date otherwise prescribed for such
3 payment.

4 12. Early termination of taxable year. If the commissioner of finance
5 finds that a taxpayer designs quickly to remove its property from this
6 state, or to conceal its property therein, or to do any other act tend-
7 ing to prejudice or to render wholly or partly ineffectual proceedings
8 to collect the tax for the current or the preceding taxable year unless
9 such proceedings be brought without delay, the commissioner of finance
10 shall declare the taxable period for such taxpayer immediately termi-
11 nated, and shall cause notice of such finding and declaration to be
12 given the taxpayer, together with a demand for immediate payment of the
13 tax for the taxable period so declared terminated and of the tax for the
14 preceding taxable year so much of such tax as is unpaid, whether or not
15 the time otherwise allowed by law for filing return and paying the tax
16 has expired; and such taxes shall thereupon become immediately due and
17 payable. In any proceeding brought to enforce payment of taxes made due
18 and payable by virtue of the provisions of this subdivision, the finding
19 of the commissioner of finance made as herein provided, whether made
20 after notice to the taxpayer or not, shall be for all purposes presump-
21 tive evidence of jeopardy.

22 13. Reopening of taxable period. Notwithstanding the termination of
23 the taxable period of the taxpayer by the commissioner of finance, as
24 provided in subdivision twelve of this section, the commissioner of
25 finance may reopen such taxable period each time the taxpayer is found
26 by the commissioner of finance to have received income, within the
27 current taxable year, since the termination of such period. A taxable
28 period so terminated by the commissioner of finance may be reopened by
29 the taxpayer if it files with the commissioner of finance a true and
30 accurate return under any of the named subchapters for such taxable
31 period, together with such other information as the commissioner of
32 finance may by regulations prescribe.

33 14. Furnishing of bond where taxable year is closed by the commission-
34 er of finance. Payment of taxes shall not be enforced by any proceedings
35 under the provisions of subdivision twelve of this section prior to the
36 expiration of the time otherwise allowed for paying such taxes if the
37 taxpayer furnishes, under regulations prescribed by the commissioner of
38 finance, a bond to insure the timely making of returns with respect to,
39 and payment of, such taxes or any taxes for prior years.

40 § 11-686 Criminal penalties; cross-reference. For criminal penalties,
41 see chapter forty of this title.

42 § 11-687 General powers of the commissioner of finance. 1. General.
43 The commissioner of finance shall administer and enforce the tax imposed
44 by the named subchapters and the commissioner is authorized to make such
45 rules and regulations, and to require such facts and information to be
46 reported, as the commissioner may deem necessary to enforce the
47 provisions of this subchapter and of the named subchapters; and the
48 commissioner may delegate the commissioner's powers and functions under
49 all subchapters of this chapter to one of the commissioner's deputies or
50 to any employee or employees of his or her department.

51 2. Examination of books and witnesses. The commissioner of finance,
52 for the purpose of ascertaining the correctness of any return, or for
53 the purpose of making an estimate of tax liability of any corporation,
54 shall have power to examine or to cause to have examined, by any agent
55 or representative designated by the commissioner for that purpose, any
56 books, papers, records or memoranda bearing upon the matters required to

1 be included in the return, and may require the attendance of the corpo-
2 ration rendering the return through any officer or employee of such
3 corporation, or the attendance of any other person having knowledge in
4 the premises, and may take testimony and require proof material for the
5 commissioner's information, with power to administer oaths to such
6 person or persons.

7 3. Abatement authority. The commissioner of finance, of the commis-
8 sioner's own motion, may abate any small unpaid balance of an assessment
9 of tax, or any liability in respect thereof, if the commissioner of
10 finance determines under uniform rules prescribed by the commissioner
11 that the administration and collection costs involved would not warrant
12 collection of the amount due. The commissioner may also abate, of his
13 or her own motion, the unpaid portion of the assessment of any tax or
14 any liability in respect thereof, which is excessive in amount, or is
15 assessed after the expiration of the period of limitation properly
16 applicable thereto, or is erroneously or illegally assessed. No claim
17 for abatement under this subdivision shall be filed by a taxpayer.

18 4. Special refund authority. Where no questions of fact or law are
19 involved and it appears from the records of the commissioner of finance
20 that any moneys have been erroneously or illegally collected from any
21 taxpayer or other person, or paid by such taxpayer or other person under
22 a mistake of facts, pursuant to the provisions of this subchapter or any
23 of the named subchapters, the commissioner of finance at anytime, with-
24 out regard to any period of limitations, shall have the power, upon
25 making a record of his or her reasons therefor in writing, to cause such
26 moneys so paid and being erroneously and illegally held to be refunded.

27 5. (a) Authority to set interest rates. The commissioner of finance
28 shall set the overpayment and underpayment rates of interest to be paid
29 pursuant to sections 11-606, 11-608, 11-645, 11-647, 11-656, 11-658,
30 11-675, 11-676, and 11-679 of this chapter, but if no such rate or rates
31 of interest are set, such overpayment rate shall be deemed to be set at
32 six percent per annum and such underpayment rate shall be deemed to be
33 set at seven and one-half percent per annum. Such overpayment and
34 underpayment rates shall be the rates prescribed in paragraph (b) of
35 this subdivision but the underpayment rate shall not be less than seven
36 and one-half percent per annum. Any such rates set by the commissioner
37 of finance shall apply to taxes, or any portion thereof, which remain or
38 become due or overpaid on or after the date on which such rates become
39 effective and shall apply only with respect to interest computed or
40 computable for periods or portions of periods occurring in the period
41 during which such rates are in effect.

42 (b) General rule. (A) Overpayment rate. The overpayment rate set under
43 this subdivision shall be the sum of (i) the federal short-term rate as
44 provided under paragraph (c) of this subdivision, plus (ii) two percent-
45 age points.

46 (B) Underpayment rate. The underpayment rate set under this subdivi-
47 sion shall be the sum of (i) the federal short-term rate as provided
48 under paragraph (c) of this subdivision, plus (ii) seven percentage
49 points.

50 (c) Federal short-term rate. For purposes of this subdivision:

51 (A) The federal short-term rate for any month shall be the federal
52 short-term rate determined by the United States secretary of the treas-
53 ury during such month in accordance with subsection (d) of section
54 twelve hundred seventy-four of the internal revenue code for use in
55 connection with section six thousand six hundred twenty-one of the
56 internal revenue code. Any such rate shall be rounded to the nearest

1 full percent, or, if a multiple of one-half of one percent, such rate
2 shall be increased to the next highest full percent.

3 (B) Period during which rate applies.

4 (i) In general. Except as provided in clause (ii) of this subpara-
5 graph, the federal short-term rate for the first month in each calendar
6 quarter shall apply during the first calendar quarter beginning after
7 such month.

8 (ii) Special rule for the month of September, nineteen hundred eight-
9 y-nine. The federal short-term rate for the month of April, nineteen
10 hundred eighty-nine shall apply with respect to setting the overpayment
11 and underpayment rates for the month of September, nineteen hundred
12 eighty-nine.

13 (d) Publication of interest rates. The commissioner of finance shall
14 cause to be published in the city record, and give other appropriate
15 general notice of, the interest rates to be set under this subdivision
16 no later than twenty days preceding the first day of the calendar quar-
17 ter during which such interest rates apply. The setting and publication
18 of such interest rates shall not be included within paragraph (a) of
19 subdivision five of section one thousand forty-one of the city charter
20 relating to the definition of a rule.

21 (e) Cross-reference. For provisions relating to the power of the
22 commissioner of finance to abate small amounts of interest, see subdivi-
23 sion three of this section.

24 6. In computing the amount of any interest required to be paid under
25 this subchapter or any of the named subchapters by the commissioner of
26 finance or by the taxpayer, or any other amount determined by reference
27 to such amount of interest, such interest and such amount shall be
28 compounded daily. The preceding sentence shall not apply for purposes of
29 computing the amount of any addition to tax for failure to pay estimated
30 tax under subdivision three of section 11-676 of this subchapter.

31 § 11-688 Secrecy required of official; penalty for violation. 1.
32 Except in accordance with proper judicial order or as otherwise provided
33 by law, it shall be unlawful for the commissioner of finance, the
34 department of finance of the city, any officer or employee of the
35 department of finance of the city, the tax appeals tribunal, any commis-
36 sioner or employee of such tribunal, any person who, pursuant to this
37 section, is permitted to inspect any report or return, or to whom any
38 information contained in any report or return is furnished, any person
39 engaged or retained by such department on an independent contract basis,
40 or any person who in any manner may acquire knowledge of the contents of
41 a report filed pursuant to this chapter, to divulge or make known in any
42 manner the amount of income or any particulars set forth or disclosed in
43 any report or return, under this chapter. The officers charged with the
44 custody of such reports and returns shall not be required to produce any
45 of them or evidence of anything contained in them in any action or
46 proceeding in any court, except on behalf of the city in an action or
47 proceeding involving the collection of a tax due under this chapter to
48 which the city is a party or a claimant, or on behalf of any party to
49 any action or proceeding under the provisions of this chapter when the
50 reports, returns or facts shown thereby are directly involved in such
51 action or proceeding, in any of which events the court may require the
52 production of, and may admit in evidence, so much of said reports or
53 returns or of facts shown thereby as are pertinent to the action or
54 proceeding, and no more. Nothing herein shall be construed to prohibit
55 the delivery to a taxpayer or its duly authorized representative of a
56 copy of any report filed by it, nor to prohibit the publication of

1 statistics so classified as to prevent the identification of particular
2 reports or returns and the items thereof, or the inspection by the
3 corporation counsel or other legal representatives of the city of the
4 report or return of any taxpayer which shall bring action to set aside
5 or review the tax based thereon, or against which an action or proceed-
6 ing under this chapter or under any local law of the city imposed as
7 authorized by the act authorizing the adoption of this chapter has been
8 recommended by the commissioner of finance or the corporation counsel or
9 has been instituted, or the inspection of the reports or returns of any
10 taxpayer by the duly designated officers or employees of the city for
11 purposes of an audit under this chapter or an audit authorized by the
12 act authorizing the adoption of this chapter; and nothing in this
13 subchapter or chapter eleven of this title shall be construed to prohib-
14 it the publication of the issuer's allocation percentage, as defined in
15 subparagraph one of paragraph (b) of subdivision three of section 11-604
16 of this chapter, of any corporation which may be required to be allo-
17 cated within the city for purposes of the tax imposed by any of the
18 named subchapters or chapter eleven of this title.

19 2. (a) Any officer or employee of the state or city who willfully
20 violates the provisions of subdivision one of this section shall be
21 dismissed from office and be incapable of holding any public office in
22 the city or this state for a period of five years thereafter.

23 (b) Cross-reference: For criminal penalties, see chapter forty of this
24 title.

25 3. Notwithstanding any provisions of this section, the commissioner of
26 finance may permit the secretary of the treasury of the United States or
27 his or her delegates, or the proper officer of this or any other state
28 charged with tax administration, or the authorized representative of
29 either such officer, to inspect the returns or reports filed under any
30 of the named subchapters, or may furnish to such officer or his or her
31 authorized representative an abstract of any such return or report or
32 supply information concerning an item contained in any such return or
33 report, or supply him or her with information concerning an item
34 contained in any such return or report, or disclosed by an investigation
35 of tax liability under any of the named subchapters, but such permission
36 shall be granted or such information furnished to such officer or his or
37 her representative only if the laws of the United States or of such
38 state, as the case may be, grant substantially similar privileges to the
39 commissioner of finance and such information is to be used for tax
40 purposes only; and provided further the commissioner of finance may
41 furnish to the secretary of the treasury of the United States or his or
42 her delegates or to the tax commission of the state of New York or its
43 delegates such returns or reports filed under any of the named subchap-
44 ters and other tax information, as he or she may consider proper, for
45 use in court actions or proceedings under the internal revenue code or
46 the tax law of the state of New York, whether civil or criminal, where a
47 written request therefor has been made to the commissioner of finance by
48 the secretary of the treasury or by such tax commission or by their
49 delegates, provided the laws of the United States or the laws of the
50 state of New York grant substantially similar powers to the secretary of
51 the treasury or his or her delegates or to such tax commission or its
52 delegates. Where the commissioner of finance has so authorized use of
53 returns, reports or other information in such actions or proceedings,
54 officers and employees of the department of finance may testify in such
55 actions or proceedings in respect to such returns, reports of other
56 information.

1 4. Notwithstanding the provisions of subdivision one of this section,
2 the commissioner of finance, in his or her discretion, may require or
3 permit any or all persons liable for any tax imposed by this chapter to
4 make payments on account of estimated tax and payment of any tax, penal-
5 ty or interest imposed by this chapter to banks, banking houses or trust
6 companies designated by the commissioner of finance and to file declara-
7 tions of estimated tax, applications for automatic extensions of time to
8 file reports, and reports with such banks, banking houses or trust
9 companies as agents of the commissioner of finance, in lieu of making
10 any such payment directly to the commissioner of finance. However, the
11 commissioner of finance shall designate only such banks, banking houses
12 or trust companies as are depositories or financial agents of the city.

13 5. This section shall be deemed a state statute for purposes of para-
14 graph (a) of subdivision two of section eighty-seven of the public offi-
15 cers law.

16 6. Notwithstanding anything in subdivision one of this section to the
17 contrary, if a taxpayer has petitioned the tax appeals tribunal for
18 administrative review as provided in section one hundred seventy of the
19 charter of the preceding municipality as it existed January first, nine-
20 teen hundred ninety-four, the commissioner of finance shall be author-
21 ized to present to the tribunal any report or return of such taxpayer,
22 or any information contained therein or relating thereto, which may be
23 material or relevant to the proceeding before the tribunal. The tax
24 appeals tribunal shall be authorized to publish a copy or a summary of
25 any decision rendered pursuant to section one hundred seventy-one of the
26 charter of the preceding municipality as it existed January first, nine-
27 teen hundred ninety-four.

28 7. Notwithstanding anything in subdivision one of this section, the
29 commissioner of finance may disclose to a taxpayer or a taxpayer's
30 related member, as defined in paragraph (n) of subdivision eight of
31 section 11-602, paragraph (n) of subdivision eight of section 11-652 or
32 paragraph one of subdivision (q) of section 11-641 of this chapter,
33 information relating to any royalty paid, incurred or received by such
34 taxpayer or related member to or from the other, including the treatment
35 of such payments by the taxpayer or the related member in any report or
36 return transmitted to the commissioner of finance under this title.

37 § 11-689 Disposition of revenues. All revenues resulting from the
38 imposition of the taxes under this chapter shall be paid into the treas-
39 ury of the city and shall be credited to and deposited in the general
40 fund of the city, but no part of such revenues may be expended unless
41 appropriated in the annual budget of the city.

42 § 11-690 Inconsistencies with other laws. If any provision of this
43 chapter is inconsistent with, in conflict with, or contrary to any other
44 provision of law, such provision of this chapter shall prevail over such
45 other provision and such other provision shall be deemed to have been
46 amended, superseded or repealed to the extent of such inconsistency,
47 conflict or contrariety.

48 CHAPTER 7

49 COMMERCIAL RENT OR OCCUPANCY TAX

50 § 11-701 Definitions. When used in this chapter the following terms
51 shall mean or include:

52 1. "Person." An individual, partnership, society, association, joint
53 stock company, corporation, estate, receiver, assignee, trustee or any
54 other person acting in a fiduciary capacity, whether appointed by a
55 court or otherwise, and any combination of individuals.

1 2. "Landlord." A person who grants the right to use or occupy premises
2 to any lessee, sublessee, licensee or concessionaire, whether or not
3 such person is the owner of the premises.

4 3. "Tenant." A person paying or required to pay rent for premises as a
5 lessee, sublessee, licensee or concessionaire.

6 4. "Premises." Any real property or part thereof, and any structure
7 thereon or space therein.

8 5. "Taxable premises." Any premises in the city occupied, used or
9 intended to be occupied or used for the purpose of carrying on or exer-
10 cising any trade, business, profession, vocation or commercial activity,
11 including any premises so used even though it is used solely for the
12 purpose of renting, or granting the right to occupy or use, the same
13 premises in whole or in part to tenants.

14 6. "Rent." The consideration paid or required to be paid by a tenant
15 for the use or occupancy of premises, valued in money, whether received
16 in money or otherwise, including all credits and property or services of
17 any kind and including any payment required to be made by a tenant on
18 behalf of his or her landlord for real estate taxes, water rents or
19 charges, sewer rents or any other expenses, including insurance, normal-
20 ly payable by a landlord who owns the realty other than expenses for the
21 improvement, repair or maintenance of the tenant's premises.

22 7. "Base rent." The rent paid for each taxable premises by a tenant to
23 his or her landlord for a period, less the amounts received by or due
24 such tenant for the same period from any tenant of any part of such
25 premises:

26 (i) as rent for premises which constitute taxable premises of such
27 tenant except where such tenant is exempt from tax thereon pursuant to
28 subdivision b or paragraph six of subdivision c of section 11-704 of
29 this chapter; provided, however, that for tax periods beginning on and
30 after June first, nineteen hundred eighty-five, rent received or due
31 from a tenant exempt from tax thereon pursuant to paragraph two of
32 subdivision b of section 11-704 of this chapter, as such paragraph two
33 was in effect immediately prior to its amendment by local law number
34 fifty-seven for the year nineteen hundred ninety-three, may be deducted
35 if such tenant occupies or uses the premises pursuant to a written
36 agreement made prior to June first, nineteen hundred eighty-four, the
37 terms and conditions of which have not been changed or amended; and
38 provided, further, that for tax periods beginning on and after June
39 first, nineteen hundred eighty-five, with respect to a tenant exempt
40 from tax pursuant to paragraph two of subdivision b of section 11-704 of
41 this chapter, as such paragraph two was in effect immediately prior to
42 its amendment by local law number fifty-seven for the year nineteen
43 hundred ninety-three, because of the reduction in base rent provided for
44 in subdivision h of section 11-704 of this chapter, rent received or due
45 from such tenant may be deducted if such tenant occupies or uses the
46 premises pursuant to a written agreement made prior to June first, nine-
47 teen hundred eighty-five, the terms and conditions of which have not
48 been changed or amended; and provided, further, that for tax periods
49 beginning on and after June first, nineteen hundred ninety-four, with
50 respect to a tenant exempt from tax pursuant to paragraph two of subdi-
51 vision b of section 11-704 of this chapter as a result of the amendment
52 of such paragraph two by local law number fifty-seven for the year nine-
53 teen hundred ninety-three, whether or not such exemption is due to the
54 reduction in base rent provided for in subdivision h of section 11-704
55 of this chapter, rent received or due from such tenant may be deducted
56 if such tenant occupies or uses the premises pursuant to a written

1 agreement made prior to June first, nineteen hundred ninety-three, the
2 terms and conditions of which have not been changed or amended; and
3 provided, further, that for tax periods beginning on and after July
4 twenty-ninth, nineteen hundred eighty-seven, with respect to a tenant
5 exempt from tax pursuant to paragraph two of subdivision b of section
6 11-704 of this chapter because of the reduction in base rent provided
7 for in subdivision f of section 11-704 of this chapter, rent received or
8 due from such tenant may be deducted; and provided, further, that,
9 notwithstanding anything in this paragraph to the contrary, for tax
10 periods beginning on and after June first, nineteen hundred ninety-five,
11 with respect to a tenant exempt from tax pursuant to paragraph two of
12 subdivision b of section 11-704 of this chapter, rents received or due
13 from such tenant may be deducted;

14 (ii) as rent for premises which do not constitute taxable premises and
15 which are used by such tenant as lodging or residential premises,
16 including such residential premises in hotels, apartment hotels or lodg-
17 ing houses as defined in former title V of chapter forty-six of the code
18 of the preceding municipality;

19 (iii) who is exempt from tax under subdivision a of section 11-704 of
20 this chapter;

21 (iv) as rent for premises which do not constitute taxable premises
22 where such rent is, or to the extent that such rent is, deductible from
23 the base rent of such tenant by reason of paragraph five of subdivision
24 c of section 11-704 of this chapter; and

25 (v) as rent for premises which do not constitute taxable premises,
26 pursuant to a common law relationship of landlord and tenant, notwith-
27 standing the definition given to those terms by paragraphs two and three
28 of this section, except where it is received as rent, whether or not
29 such landlord-tenant relationship exists, for premises which are occu-
30 pied as or constitute:

31 (a) a locker, safe deposit box or beach cabana;

32 (b) storage space in part of a warehouse or in part of any other
33 structure or area in which goods are stored;

34 (c) garage space or parking space in any part of a garage, of a park-
35 ing lot or of a parking area where the entire garage, entire parking lot
36 or entire parking area accommodates more than two motor vehicles;

37 (d) an occupancy of a type which customarily has not been the subject
38 of such a common law relationship of landlord and tenant. Nothing
39 contained in this chapter shall be construed to permit a tenant to
40 deduct the same rent from his or her base rent more than once.

41 8. "Premises used for railroad transportation purposes." The portion
42 of any premises of any person actually operating a railroad, used by
43 such person for normal or necessary railroad transportation purposes.
44 The words normal or necessary railroad transportation purposes, as used
45 in this definition, shall not include any activities which are normally
46 carried on by persons not engaged in furnishing railroad transportation
47 service such as the operation of retail stores, barber shops, restau-
48 rants, theatres, hotels, and newsstands; nor shall such words include
49 any activities which are not deemed transportation purposes under
50 sections four hundred eighty-nine-b and four hundred eighty-nine-m of
51 the real property tax law.

52 9. "Premises used for air transportation purposes." The portion of any
53 premises, located within an airport or within an air transportation
54 terminal shared by more than one air line, of any person actually oper-
55 ating an air line as a common carrier, used by such person for normal or
56 necessary air transportation purposes. The words normal or necessary air

1 transportation purposes, as used in this definition, shall not include
2 any activities which are normally carried on by persons not engaged in
3 furnishing air transportation service such as the operation of retail
4 stores, barber shops, restaurants, theatres, hotels and newsstands.

5 10. "Return." Any return filed or required to be filed as herein
6 provided other than an information return.

7 11. "Tax period." The period for which any return is required to be
8 filed under this chapter.

9 12. "Tax year." June first of any calendar year through May thirty-
10 first of the following calendar year.

11 13. "Day." A calendar day or any part thereof.

12 14. "City." The city of Staten Island.

13 15. "Commissioner of finance." The commissioner of finance of the
14 city.

15 16. "Comptroller." The comptroller of the city.

16 17. "Dramatic or musical arts performance." A performance or repe-
17 tition thereof in a theatre, opera house or concert hall of a live
18 dramatic performance, whether or not musical in part. The performance
19 encompassed by this definition shall include so-called legitimate thea-
20 tre plays, musical comedies and operettas. They shall not include
21 circuses, ice skating shows or aqua shows; they shall not include
22 performances of any kind in a roof garden, cabaret or other similar
23 place; and they shall not include radio or television performances,
24 whether or not such performances are prerecorded for later broadcast.

25 18. "Premises used for omnibus transportation purposes." The portion
26 of any premises located within a passenger terminal of any person actu-
27 ally operating an omnibus line or route as a common carrier, used by
28 such person for normal or necessary omnibus line or route transportation
29 purposes. The words normal or necessary omnibus line or route transpor-
30 tation purposes, as used in this definition, shall not include any
31 activities, which are normally carried on by persons not engaged in
32 furnishing omnibus line or route transportation services such as the
33 operation of retail stores, barber shops, restaurants, theatres, hotels
34 and newsstands.

35 19. "Tax appeals tribunal." The tax appeals tribunal established by
36 section one hundred sixty-eight of the charter of the preceding munici-
37 pality as it existed January first, nineteen hundred ninety-four.

38 20. "Premises used for retail sales purposes." Premises primarily used
39 for the selling or otherwise disposing or furnishing of tangible goods
40 directly to the ultimate user or consumer.

41 § 11-702 Imposition of tax. a. (1) For each tax year commencing on
42 or after June first, nineteen hundred sixty-three and ending on or
43 before May thirty-first, nineteen hundred seventy, every tenant shall
44 pay a tax of two and one-half per centum of his or her base rent for
45 such tax year where his or her base rent is not in excess of twenty-five
46 hundred dollars per year or where his or her base rent is for a period
47 of less than one year and would not exceed twenty-five hundred dollars
48 for a year if it were paid on an equivalent basis for an entire year or
49 a tax of five per centum of his or her base rent for such tax year where
50 his or her base rent is in excess of twenty-five hundred dollars per
51 year or where his or her base rent is for a period of less than one year
52 and would exceed twenty-five hundred dollars a year if it were paid on
53 an equivalent basis for an entire year.

54 (2) For each tax year commencing on or after, June first, nineteen
55 hundred seventy, every tenant shall pay a tax at the rates shown in the
56 following table:

1	When the annual rent is:	But not more than:	The rate shall be:
2	0.....	\$2,499	2 1/2% of the rent
3	\$ 2,500 or over.....	\$4,999	5% of the rent
4	\$ 5,000 or over.....	\$7,999	6 1/4% of the rent
5	\$ 8,000 or over.....	\$10,999	7% of the rent
6	\$11,000 and over.....		7 1/2% of the rent

7 For tax years embraced within the period beginning after May thirty-
8 first, nineteen hundred seventy-seven and ending May thirty-first, nine-
9 teen hundred eighty, the tax shall be imposed at rates equal to ninety
10 percent of the rates shown in such table.

11 For tax years beginning after May thirty-first, nineteen hundred
12 eighty and ending May thirty-first, nineteen hundred eighty-one, the tax
13 shall be imposed at rates equal to eighty-five percent of the rates
14 shown in such table.

15 For tax years beginning after May thirty-first, nineteen hundred
16 eighty-one, the tax shall be imposed at rates equal to eighty percent of
17 the rates shown in such table.

18 Where the rent is for a period of less than one year, the rate shall
19 be determined by assuming that the rent is on an equivalent basis for
20 the entire year.

21 b. Nothing contained in this chapter shall be deemed to require
22 payment of a double or multiple tax pursuant to this chapter on any part
23 of any taxable premises.

24 c. Where a tenant pays an undivided rent for premises used both for
25 residential purposes and as taxable premises, the tax shall be applica-
26 ble to so much of the rent as is ascribable to the portion of such prem-
27 ises used as taxable premises. Where, however, the rent ascribable to
28 so much of such premises as is used as taxable premises does not exceed
29 fifty dollars a month, such rent shall be excluded from such tenant's
30 base rent. Nothing contained in this subdivision shall be construed as
31 indicating an intent to exclude any base rent from the tax imposed by
32 this chapter merely because it is paid as part of an undivided rent for
33 premises which are only partially used as taxable premises.

34 d. The tax imposed by this chapter shall be in addition to any and
35 all other taxes including the public housing tax imposed by chapter ten
36 of this title.

37 e. Nothing contained in this section shall be construed as permitting
38 base rent of a tenant for one taxable premises to be reduced by deduct-
39 ing rents received by him or her for another taxable premises of which
40 he or she is also a tenant.

41 § 11-703 Presumptions and burden of proof. a. For the purpose of
42 the proper administration of this chapter and to prevent evasion of the
43 tax hereby imposed it shall be presumed that all premises are taxable
44 premises and that all rent paid or required to be paid by a tenant is
45 base rent until the contrary is established, and the burden of proving
46 that such presumptive base rent or any portion thereof is not included
47 in the measure of the tax imposed by this chapter shall be on the
48 tenant.

49 b. Where a tenant uses premises both for residential purposes and as
50 taxable premises and the tenant pays an undivided rent for the premises
51 so used, it shall be conclusively presumed against such tenant that the
52 rent ascribable to so much of such premises as is used as taxable prem-
53 ises shall be the amount which such tenant deducts as rent for such
54 premises in determining the tenant's federal income tax, as reduced by
55 any disallowance of such deduction which is not being contested, which
56 is fairly attributable to the tax period or tax year.

1 § 11-704 Exemptions and deductions from base rent. a. The following
2 shall be exempt from the payment of the tax imposed by this chapter:

3 1. The state of New York, or any public corporation, including a
4 public corporation created pursuant to agreement or compact with another
5 state or the Dominion of Canada, improvement district or other political
6 subdivision of the state;

7 2. The United States of America, insofar as it is immune from taxa-
8 tion;

9 3. The United Nations or other world-wide international organizations
10 of which the United States of America is a member;

11 4. Any corporation, or association, or trust, or community chest, fund
12 or foundation, organized and operated exclusively for religious, chari-
13 table, or educational purposes, or for the prevention of cruelty to
14 children or animals, and no part of the net earnings of which inures to
15 the benefit of any private shareholder or individual and no substantial
16 part of the activities of which is carrying on propaganda, or otherwise
17 attempting to influence legislation; provided, however, that nothing in
18 this paragraph shall include an organization operated for the primary
19 purpose of carrying on a trade or business for profit, whether or not
20 all of its profits are payable to one or more organizations described in
21 this paragraph;

22 5. Any tenant who would be subject to taxes under this chapter aggre-
23 gating not more than one dollar for a tax year with respect to all taxa-
24 ble premises used by the tenant; and

25 6. Any tenant located in the "World Trade Center Area," as defined as
26 follows: the area in the borough of Manhattan bounded by Church Street
27 on the east starting at the intersection of Liberty Street and Church
28 Street; running northerly along the center line of Church Street to the
29 intersection of Church Street and Vesey Street; running westerly along
30 the center line of Vesey Street to the intersection of Vesey Street and
31 West Broadway; running northerly along the center line of West Broadway
32 to the intersection of West Broadway and Barclay Street; running wester-
33 ly along the center line of Barclay Street to the intersection of
34 Barclay Street and Washington Street; running southerly along the center
35 line of Washington Street to the intersection of Washington Street and
36 Vesey Street; running westerly along the center line of Vesey Street to
37 the intersection of Vesey Street and West Street; running southerly
38 along the center line of West Street to the intersection of West Street
39 and Liberty Street; running easterly along the center line of Liberty
40 Street to the intersection of Liberty Street and Washington Street;
41 running southerly along the center line of Washington Street to the
42 intersection of Washington Street and Albany Street; running easterly
43 along the center line of Albany Street to the intersection of Albany
44 Street and Greenwich Street; running northerly along the center line of
45 Greenwich Street to Liberty Street; and running easterly along the
46 center line of Liberty Street to the intersection of Liberty Street and
47 Church Street.

48 b. 1. A tenant who uses premises for no more than fourteen days in a
49 tax year whether or not consecutive, where his or her agreement with his
50 or her landlord does not require him or her to pay rent for a longer
51 period shall be exempt from the payment of the tax imposed by this chap-
52 ter in respect to the rent paid by him or her for such premises.

53 2. A tenant whose base rent, (i) for tax years beginning on or after
54 June first, nineteen hundred eighty-one and ending on or before May
55 thirty-first, nineteen hundred eighty-four, is not in excess of four
56 thousand nine hundred ninety-nine dollars per year, (ii) for the tax

1 year beginning June first, nineteen hundred eighty-four and ending May
2 thirty-first, nineteen hundred eighty-five, is not in excess of seven
3 thousand nine hundred ninety-nine dollars per year, (iii) for tax years
4 beginning on or after June first, nineteen hundred eighty-five and
5 ending on or before May thirty-first, nineteen hundred ninety-four, is
6 not in excess of ten thousand nine hundred ninety-nine dollars per year,
7 (iv) for the tax year beginning June first, nineteen hundred ninety-four
8 and ending May thirty-first, nineteen hundred ninety-five, is not in
9 excess of twenty thousand nine hundred ninety-nine dollars per year, (v)
10 for the tax year beginning June first, nineteen hundred ninety-five and
11 ending May thirty-first, nineteen hundred ninety-six, is not in excess
12 of thirty thousand nine hundred ninety-nine dollars per year, (vi) for
13 the tax year beginning June first, nineteen hundred ninety-six and
14 ending May thirty-first, nineteen hundred ninety-seven, is not in excess
15 of thirty-nine thousand nine hundred ninety-nine dollars per year, (vii)
16 for tax years beginning on or after June first, nineteen hundred nine-
17 ty-seven and ending on or before May thirty-first, two thousand, is not
18 in excess of ninety-nine thousand nine hundred ninety-nine dollars per
19 year, calculated without regard to any reduction in base rent allowed by
20 paragraph two of subdivision h of this section, (viii) for the period
21 beginning June first, two thousand and ending November thirtieth, two
22 thousand, is not in excess of ninety-nine thousand nine hundred ninety-
23 nine dollars per year, calculated without regard to any reduction in
24 base rent allowed by paragraph two of subdivision h of this section,
25 (ix) for the period beginning December first, two thousand and ending
26 May thirty-first, two thousand one, is not in excess of one hundred
27 forty-nine thousand nine hundred ninety-nine dollars per year, calcu-
28 lated without regard to any reduction in base rent allowed by paragraph
29 two of subdivision h of this section, and (x) for tax years beginning on
30 or after June first, two thousand one, is not in excess of two hundred
31 forty-nine thousand nine hundred ninety-nine dollars per year, calcu-
32 lated without regard to any reduction in base rent allowed by paragraph
33 two of subdivision h of this section, shall be exempt from the payment
34 of the tax imposed by this chapter with respect to such rent, provided,
35 however, that where the base rent of such tenant is for a period of less
36 than one year, such base rent shall, for purposes of this paragraph, be
37 determined as if it had been on an equivalent basis for the entire year;
38 and provided, further, that for purposes of subparagraphs (viii) and
39 (ix) of this paragraph, base rent for the period specified in each of
40 such subparagraphs shall be separately annualized as if it had been on
41 an equivalent basis for an entire year, irrespective of the actual base
42 rent for the tax year including the period specified in such subpara-
43 graph. Provided, however, (xi) a tenant whose base rent for the tax year
44 beginning June first, nineteen hundred eighty-four and ending May thir-
45 ty-first, nineteen hundred eighty-five, is at least eight thousand
46 dollars per year, but not in excess of ten thousand nine hundred nine-
47 ty-nine dollars per year, shall be exempt from the payment of the tax
48 imposed by this chapter with respect to such rent for the period begin-
49 ning December first, nineteen hundred eighty-four and ending May thir-
50 ty-first, nineteen hundred eighty-five, and (xii) a tenant whose base
51 rent for the tax year beginning June first, nineteen hundred ninety-five
52 and ending May thirty-first, nineteen hundred ninety-six, is at least
53 thirty-one thousand dollars per year, but not in excess of thirty-nine
54 thousand nine hundred ninety-nine dollars per year, shall be exempt from
55 the payment of the tax imposed by this chapter with respect to such rent

1 for the period beginning September first, nineteen hundred ninety-five
2 and ending May thirty-first, nineteen hundred ninety-six.

3 c. Base rent shall be reduced by the amount of the taxpayer's rent
4 for, or reasonably ascribable to, the taxpayer's own use of the prem-
5 ises:

6 1. As premises used for railroad transportation purposes.

7 2. As premises used for air transportation purposes.

8 3. As piers insofar as such premises are used in interstate or foreign
9 commerce.

10 4. Which are located in, upon, above or under any public street, high-
11 way or other public place, and which are defined as special franchise
12 property in the real property tax law.

13 5. Which are taxed pursuant to subchapter one of chapter twenty of
14 this title to the extent that such premises are subject to, and during
15 the period that they are subject to, such tax.

16 6. Which are taxed pursuant to subdivision b or c of section 11-1005
17 of this title.

18 7. Which are advertising signs, advertising space, vending machines or
19 newsstands within or attached to stations, platforms, stairways,
20 entranceways, passageways, mezzanines or tracks of a rapid transit
21 subway or elevated railroad operated by the New York city transit
22 authority when the rent of the tenant or of the tenant's landlord is
23 payable to such authority.

24 8. As premises used for omnibus transportation purposes.

25 9. As premises used for retail sales purposes where such premises are
26 located in the area in the borough of Manhattan bounded by Murray Street
27 on the north starting at the intersection of West Street and Murray
28 Street; running easterly along the center line of Murray Street,
29 connecting through City Hall Park with the center line of Frankfort
30 Street and running easterly along the center lines of Frankfort and
31 Dover Streets to the intersection of Dover Street and South Street;
32 running southerly along the center line of South Street to Peter Minuit
33 Plaza; connecting through Peter Minuit Plaza to the center line of State
34 Street and running northwesterly along the center line of State Street
35 to the intersection of State Street and Battery Place; running westerly
36 along the center line of Battery Place to the intersection of Battery
37 Place and West Street; and running northerly along the center line of
38 West Street to the intersection of West Street and Murray Street. Any
39 tax lot which is partly located inside such area shall be deemed to be
40 entirely located inside such area.

41 d. A tenant who uses taxable premises for renting to others for resi-
42 dential purposes to the extent of seventy-five per centum or more of the
43 rentable floor space shall be exempt from the tax imposed by this chap-
44 ter in respect to the rent paid for such premises from the time that
45 construction thereof commences, provided, however, that this paragraph
46 shall not be applicable to hotels, apartment hotels or lodging houses as
47 defined in former title V of chapter forty-six of the code of the
48 preceding municipality.

49 e. (1) A tenant who uses taxable premises for a dramatic or musical
50 arts performance for less than four weeks where there is no indication
51 prior to or at the time that such performance commences that the
52 performance is intended to continue for less than four weeks shall be
53 exempt from the tax imposed by this chapter with respect to the rent
54 paid for such taxable premises.

55 (2) (i) Notwithstanding any other provision of law to the contrary, a
56 tenant who uses taxable premises for the production and performance of a

1 theatrical work shall be exempt from the tax imposed by this chapter
2 with respect to the rent paid for such taxable premises for a period not
3 exceeding fifty-two weeks beginning on the date that the production of
4 such theatrical work commences, provided, however, that this subpara-
5 graph shall not apply to any theatrical work the production of which
6 commenced prior to June first, nineteen hundred ninety-five.

7 (ii) For purposes of this paragraph, the term "theatrical work" shall
8 mean a performance or repetition thereof in a theater of a live dramatic
9 performance, whether or not musical in part, that contains sustained
10 plots or recognizable thematic material, including so-called legitimate
11 theater plays or musicals, dramas, melodramas, comedies, compilations,
12 farces or reviews, provided that such performance is intended to be open
13 to the public for at least two weeks. The term "theatrical work" shall
14 not include performances of any kind in a roof garden, cabaret or simi-
15 lar place, circuses, ice skating shows, aqua shows, variety shows, magic
16 shows, animal acts, concerts, industrial shows or similar performances,
17 or radio or television performances, whether or not such performances
18 are pre-recorded for later broadcast.

19 f. 1. A tenant who is an eligible business and has obtained the
20 certifications required by paragraph four of this subdivision shall be
21 permitted to reduce his or her base rent for particular premises to
22 which he or she has relocated by an amount determined by multiplying
23 such base rent by a fraction the numerator of which is the number of
24 eligible aggregate employment shares maintained by such tenant with
25 respect to such premises in the tax year for which such tenant claims
26 the reduction and the denominator of which is a number equal to the
27 number of aggregate employment shares maintained by such tenant in such
28 premises in the tax year for which such tenant claims the reduction
29 allowed by this subdivision, provided, however, that such denominator
30 shall not exceed the highest number of aggregate employment shares main-
31 tained by such tenant in such premises in any of the tax years described
32 below which commence prior to or concurrently with the tax year for
33 which such tenant claims the reduction allowed by this subdivision: (i)
34 the tax year during which such tenant relocates to such particular prem-
35 ises; and (ii) each of the three tax years immediately succeeding the
36 tax year during which such tenant relocates to such premises. Base rent
37 for a particular premises may be reduced as provided in this subdivision
38 for the tax year during which the tenant relocates to such premises and
39 for any of the twelve immediately succeeding tax years during which the
40 tenant maintains eligible aggregate employment shares with respect to
41 such premises, provided, however, that there shall be no such reduction
42 with respect to base rent for any part of the tax year preceding the
43 date of relocation to such premises, and provided, further, however, in
44 the twelfth succeeding tax year there shall be a reduction only with
45 respect to base rent for the period, commencing on the first day of such
46 tax year, equal to the difference between the total number of days in
47 the tax year of relocation and the number of days in such tax year of
48 relocation commencing with and following the date of relocation, and
49 provided, further, that there shall be no such reduction with respect to
50 premises used for retail activity or hotel services.

51 2. (i) For purposes of this subdivision, the terms "eligible area,"
52 "eligible aggregate employment shares," "relocate," "retail activity"
53 and "hotel services" shall have the meanings ascribed by section 22-621
54 of the code of the preceding municipality, provided that whenever the
55 term "taxable year" appears in such section 22-621, such term shall be
56 read as "tax year," as the term "tax year" is defined in subdivision

1 twelve of section 11-701 of this chapter except when the taxable year
2 referred to is the taxable year immediately preceding the taxable year
3 during which such tenant relocates.

4 (ii) For purposes of this subdivision, the term "eligible business"
5 shall have the meaning ascribed by section 22-621 of the code of the
6 preceding municipality, provided that such term shall in addition
7 include any person subject to a tax imposed under subchapter four of
8 chapter six of this title and any person who is an insurance corporation
9 as defined in section one thousand five hundred of the tax law, which:

10 (A) has been conducting substantial business operations at one or more
11 business locations outside the eligible area for the twenty-four consec-
12 utive months immediately preceding the taxable year during which such
13 eligible business relocates; and (B) on or after May twenty-seventh,
14 nineteen hundred eighty-seven relocates all or part of such business
15 operations; and (C) on or after May twenty-seventh, nineteen hundred
16 eighty-seven first enters into a lease for the premises to which it
17 relocates or a parcel on which will be constructed such premises.

18 3. The reduction allowed by this subdivision may be claimed on an
19 estimated basis on the returns filed for the tax periods ending on the
20 last days of August, November and February of each year if, and to the
21 extent, permitted by regulations promulgated by the commissioner of
22 finance.

23 4. No tenant shall be authorized to receive a reduction in base rent
24 subject to tax under the provisions of this subdivision, until the prem-
25 ises with respect to which it is claiming a reduction in base rent meet
26 the requirements in the definition of eligible premises and until it has
27 obtained a certification of eligibility from the mayor or an agency
28 designated by the mayor, and an annual certification from the mayor or
29 an agency designated by the mayor as to the number of eligible aggregate
30 employment shares maintained by such tenant which may qualify for
31 obtaining a base rent reduction for the tenant's tax year. Any written
32 documentation submitted to the mayor or such agency or agencies in order
33 to obtain any such certification shall be deemed a written instrument
34 for purposes of section 175.00 of the penal law. Application fees for
35 such certifications shall be determined by the mayor or such agency or
36 agencies. No certification of eligibility shall be issued to an eligible
37 business on or after July first, two thousand three unless such business
38 meets the requirements of either subparagraph (a) or (b) of this para-
39 graph:

40 (a) (1) prior to such date such business has purchased, leased or
41 entered into a contract to purchase or lease particular premises or a
42 parcel on which will be constructed such premises or already owned such
43 premises or parcel;

44 (2) prior to such date improvements have been commenced on such prem-
45 ises or parcel which improvements will meet the requirements of subdivi-
46 sion (e) of section 22-621 of the code of the preceding municipality
47 relating to expenditures for improvements;

48 (3) prior to such date such business submits a preliminary application
49 for a certification of eligibility to such mayor or such agency or agen-
50 cies with respect to a proposed relocation to such particular premises;
51 and

52 (4) such business relocates to such particular premises not later than
53 thirty-six months or, in a case in which the expenditures made for the
54 improvements specified in clause two of this subparagraph are in excess
55 of fifty million dollars within seventy-two months from the date of
56 submission of such preliminary application; or

1 (b) (1) not later than June thirtieth, two thousand ten, such business
2 has purchased, leased or entered into a contract to purchase or lease
3 particular premises wholly contained in a building in which at least an
4 aggregate of forty per centum or two hundred thousand square feet,
5 whichever is less, of the nonresidential floor area of such building has
6 been purchased or leased by a business or businesses which meet or will
7 meet the requirements of subparagraph (a) of this paragraph with respect
8 to such floor area and which are or will become certified as eligible to
9 receive a credit under section 22-622 of the code of the preceding muni-
10 cipality with respect to such floor area;

11 (2) not later than June thirtieth, two thousand ten, such business
12 submits a preliminary application for a certification of eligibility to
13 such mayor or such agency or agencies with respect to a proposed relo-
14 cation to such particular premises; and

15 (3) not later than June thirtieth, two thousand ten, such business
16 relocates to such particular premises.

17 Any tenant subject to a tax imposed under chapter five, or subchapter
18 two, three or three-A of chapter six, of this title obtaining a certif-
19 ication of eligibility pursuant to subdivision (b) of section 22-622 of
20 the code of the preceding municipality shall be deemed to have obtained
21 the certification of eligibility required by this paragraph.

22 g. Whenever the rent paid by a tenant for his or her occupancy of
23 taxable premises is measured in whole or in part by the gross receipts
24 from the tenant's sales within such place, the tenant's rent, to the
25 extent paid on the basis of such gross receipts, shall be deemed not to
26 exceed fifteen percent of such gross receipts.

27 h. (1) In the case of any taxable premises located in the borough of
28 Manhattan north of the center line of ninety-sixth street or in the
29 boroughs of the Bronx, Brooklyn, Queens and Staten Island, the base rent
30 for such premises shall be reduced by ten percent for the period begin-
31 ning on January first, nineteen hundred eighty-six and ending May thir-
32 ty-first, nineteen hundred eighty-seven, by twenty percent for the peri-
33 od beginning June first, nineteen hundred eighty-seven and ending May
34 thirty-first, nineteen hundred eighty-nine, and by thirty percent for
35 the period beginning June first, nineteen hundred eighty-nine and ending
36 August thirty-first, nineteen hundred ninety-five, such reduction to be
37 made after all other exemptions and deductions authorized by this chap-
38 ter have been taken. For periods beginning September first, nineteen
39 hundred ninety-five and thereafter, a tenant of taxable premises located
40 in that part of the city specified in this paragraph shall be exempt
41 from the payment of the tax imposed by this chapter with respect to the
42 rent for such taxable premises.

43 (2) In the case of any taxable premises located in the borough of
44 Manhattan south of the center line of ninety-sixth street, the base rent
45 for such premises shall be reduced by (i) fifteen percent for the period
46 beginning March first, nineteen hundred ninety-six and ending May thir-
47 ty-first, nineteen hundred ninety-six, (ii) twenty-five percent for the
48 period beginning June first, nineteen hundred ninety-six and ending
49 August thirty-first, nineteen hundred ninety-eight, and (iii) thirty-
50 five percent for periods beginning September first, nineteen hundred
51 ninety-eight and thereafter, such reduction to be made after all other
52 exemptions and deductions authorized by this chapter have been taken.

53 i. (1) (a) (i) For purposes of, and to the extent relevant to, this
54 subdivision, the following terms shall, except to the extent hereinafter
55 modified, have the definitions assigned to such terms in section four
56 hundred ninety-nine-a of the real property tax law, and such definitions

1 shall apply with the same force and effect as if they had been set forth
2 in full in this subdivision: "abatement zone," "aggregate floor area,"
3 "applicant," "department of finance," "eligible building," "eligibility
4 period," "eligible premises," "expansion premises," "expansion tenant,"
5 "governmental agency," "landlord," "lease commencement date," "mixed-use
6 building," "new tenant," "person," "relocation area," "renewal tenant,"
7 "rent commencement date," "subtenant" and "tenant."

8 (ii) For purposes of this subdivision, the definitions assigned by
9 clause (i) of this subparagraph to the terms "eligible premises,"
10 "expansion tenant," "landlord," "new tenant" and "renewal tenant" shall
11 be modified as follows: (A) whenever the term "eligible building"
12 appears in any of such definitions, such term, notwithstanding anything
13 to the contrary, shall be deemed to include an eligible government-owned
14 building and, for purposes of subparagraph (b-2) of paragraph two of
15 subdivision i of this section, a non-residential or mixed-use building
16 located south of the center line of Canal Street in the borough of
17 Manhattan, regardless of when it received its initial certificate of
18 occupancy or initial temporary certificate of occupancy and regardless
19 of when it was constructed and shall be deemed to include an eligible
20 government-owned building; and (B) a reference in any of such defi-
21 nitions to a lease which meets the eligibility requirements of section
22 four hundred ninety-nine-c of the real property tax law shall be deemed
23 to include, in the case of a lease of premises in an eligible govern-
24 ment-owned building, a lease which meets the eligibility requirements of
25 paragraph four of this subdivision.

26 (b) When used in this subdivision, the following terms shall mean or
27 include: (i) "Eligible government-owned building." A building that
28 would be an eligible building, as such term is defined in section four
29 hundred ninety-nine-a of the real property tax law, but for the fact
30 that it is owned by a governmental agency.

31 (ii) "Eligible taxable premises." Taxable premises that are eligible
32 premises or expansion premises.

33 (iii) "Eligible tenant." A tenant with respect to whose lease of
34 eligible taxable premises there has been issued a certificate of abate-
35 ment or a certificate of eligibility.

36 (iv) "Base year." The twelve-month period that commences on the rent
37 commencement date.

38 (v) "Base rent for the base year." The total base rent for eligible
39 taxable premises for the base year, determined without regard to the
40 special reduction allowed by this subdivision.

41 (vi) "Certificate of abatement." The certificate of abatement issued
42 pursuant to section four hundred ninety-nine-d of the real property tax
43 law.

44 (vii) "Certificate of eligibility." The certificate of eligibility
45 issued pursuant to paragraph five of this subdivision.

46 (2) (a) An eligible tenant of eligible taxable premises shall be
47 allowed a special reduction in determining the taxable base rent for
48 such eligible taxable premises. Such special reduction shall be allowed
49 with respect to the rent for such eligible taxable premises for a period
50 not exceeding sixty months or, with respect to a lease commencing on or
51 after April first, nineteen hundred ninety-seven with an initial lease
52 term of less than five years, but not less than three years, for a peri-
53 od not exceeding thirty-six months, commencing on the rent commencement
54 date applicable to such eligible taxable premises, provided, however,
55 that in no event shall any special reduction be allowed for any period
56 beginning after March thirty-first, two thousand thirty-four. For

1 purposes of applying such special reduction, the base rent for the base
2 year shall, where necessary to determine the amount of the special
3 reduction allowable with respect to any number of months falling within
4 a tax period, be prorated by dividing the base rent for the base year by
5 twelve and multiplying the result by such number of months.

6 (a-1) Notwithstanding paragraph one of this subdivision, for purposes
7 of, and to the extent relevant to, the special reduction allowed by this
8 subparagraph, the definitions set forth in section four hundred ninety-
9 nine-aa of the real property tax law shall apply with the same force and
10 effect as if they had been set forth in full in this subdivision, except
11 as such definitions are hereinafter modified. An eligible tenant of
12 eligible taxable premises shall be allowed a special reduction in deter-
13 mining the taxable base rent for such eligible taxable premises,
14 provided, however, that (i) such eligible taxable premises are eligible
15 premises as defined in paragraph (c) of subdivision ten of section four
16 hundred ninety-nine-aa of the real property tax law, (ii) such eligible
17 taxable premises are located in the special garment center district
18 identified in the abatement zone defined in paragraph (c) of subdivision
19 two of section four hundred ninety-nine-aa of the real property tax law,
20 (iii) the lease for such eligible taxable premises commences within the
21 eligibility period applicable to the abatement zone defined in paragraph
22 (c) of subdivision two of section four hundred ninety-nine-aa of the
23 real property tax law, (iv) the lease for such eligible taxable premises
24 has an initial lease term of at least three years and (v) such special
25 reduction is limited to the benefit period, as defined in subdivision
26 five of section four hundred ninety-nine-aa of the real property tax
27 law, applicable to a lease commencing on or after July first, two thou-
28 sand five for eligible premises located within the abatement zone
29 defined in paragraph (c) of subdivision two of section four hundred
30 ninety-nine-aa of the real property tax law.

31 (a-2) The amount of the special reduction allowed by subparagraph
32 (a-1) of this paragraph shall be determined as follows: (i) For the
33 base year the amount of such special reduction shall be equal to the
34 base rent for the base year.

35 (ii) For the first through ninth twelve-month periods following the
36 base year the amount of such special reduction shall be equal to the
37 lesser of (A) the base rent for each such twelve-month period or (B) the
38 base rent for the base year.

39 (a-3) When used in this subdivision, for purposes of the special
40 reduction allowed by subparagraph (a-1) of this paragraph, the following
41 terms shall mean or include: (i) "Eligible taxable premises." Taxable
42 premises that are eligible premises or expansion premises.

43 (ii) "Eligible tenant." A tenant with respect to whose lease of eligi-
44 ble taxable premises there has been issued a certificate of abatement.

45 (iii) "Base year." The twelve-month period that commences on the rent
46 commencement date.

47 (iv) "Base rent for the base year." The total base rent for eligible
48 taxable premises for the base year, determined without the special
49 reduction allowed by subparagraph (a-1) of this paragraph.

50 (v) "Certificate of abatement." The certificate of abatement issued
51 pursuant to section four hundred ninety-nine-dd of the real property tax
52 law.

53 (b) Except as provided in subparagraphs (b-1) and (b-2) of this para-
54 graph, the amount of the special reduction allowed by this subdivision
55 shall be determined as follows: (i) For the base year the amount of

1 such special reduction shall be equal to the base rent for the base
2 year.

3 (ii) For the first and second twelve-month periods following the base
4 year the amount of such special reduction shall be equal to the lesser
5 of (A) the base rent for each such twelve-month period or (B) the base
6 rent for the base year.

7 (iii) For the third twelve-month period following the base year the
8 amount of such special reduction shall be equal to two-thirds of the
9 lesser of (A) the base rent for such twelve-month period or (B) the base
10 rent for the base year.

11 (iv) For the fourth twelve-month period following the base year the
12 amount of such special reduction shall be equal to one-third of the
13 lesser of (A) the base rent for such twelve-month period or (B) the base
14 rent for the base year.

15 (b-1) The amount of the special reduction allowed by this subdivision
16 with respect to a lease commencing on or after April first, nineteen
17 hundred ninety-seven with an initial lease term of less than five years,
18 but not less than three years, shall be determined as follows: (i) For
19 the base year the amount of such special reduction shall be equal to the
20 base rent for the base year.

21 (ii) For the first twelve-month period following the base year the
22 amount of such special reduction shall be equal to two-thirds of the
23 lesser of (A) the base rent for such twelve-month period or (B) the base
24 rent for the base year.

25 (iii) For the second twelve-month period following the base year the
26 amount of such special reduction shall be equal to one-third of the
27 lesser of (A) the base rent for such twelve-month period or (B) the base
28 rent for the base year.

29 (b-2) The amount of the special reduction allowed by this subdivision
30 with respect to a lease other than a sublease commencing between July
31 first, two thousand five and June thirtieth, two thousand twenty-seven
32 with an initial or renewal lease term of at least five years shall be
33 determined as follows: (i) For the base year the amount of such special
34 reduction shall be equal to the base rent for the base year.

35 (ii) For the first, second, third and fourth twelve-month periods
36 following the base year the amount of such special reduction shall be
37 equal to the lesser of (A) the base rent for each such twelve-month
38 period or (B) the base rent for the base year.

39 (c) For purposes of determining (i) whether a tenant is, pursuant to
40 the provisions of paragraph two of subdivision b of this section, exempt
41 from payment of the tax imposed by this chapter with respect to the base
42 rent for eligible taxable premises or (ii) whether, and the extent to
43 which, a tenant is eligible for the credit allowed pursuant to the
44 provisions of section 11-704.3 of this chapter with respect to eligible
45 taxable premises, the term "base rent" as used in such provisions shall
46 be the base rent as determined prior to the allowance of any special
47 reduction allowed by this subdivision.

48 (d) Notwithstanding anything to the contrary, for purposes of this
49 subdivision, expansion premises shall be treated as separate and
50 distinct from any other premises of the expansion tenant in the same
51 eligible building.

52 (3) The special reduction allowed by this subdivision shall be allowed
53 commencing on the rent commencement date; however, if the date of the
54 certificate of abatement or certificate of eligibility is later than the
55 rent commencement date, the tenant shall not, in the first instance,
56 claim the special reduction on any return required to be filed for a tax

1 period ending prior to the date of such certificate of abatement or
2 certificate of eligibility. If the date of such certificate of abatement
3 or certificate of eligibility falls in a tax period subsequent to the
4 tax period in which the rent commencement date falls, but both such
5 dates fall within the same tax year, the special reduction that was not
6 claimed in the first instance for any period preceding the date of such
7 certificate of abatement or certificate of eligibility shall be
8 reflected in the final return for the tax year. If the date of the
9 certificate of abatement or certificate of eligibility falls in the tax
10 year following the tax year in which the rent commencement date falls,
11 an amended final return shall be filed for such earlier tax year in
12 which shall be reflected any special reduction allowable for such tax
13 year; in addition, the final return for such later tax year shall
14 reflect any special reduction that was not claimed in the first instance
15 for any period in such tax year preceding the date of the certificate of
16 abatement or certificate of eligibility.

17 (4) (a) With respect to premises located in an eligible government-
18 owned building, no special reduction shall be allowed under this subdi-
19 vision unless: (i) the landlord enters into a lease for eligible prem-
20 ises with a new tenant or a renewal tenant and: (A) the lease
21 commencement date is within the eligibility period; and (B) (I) if, by
22 the sixtieth day following the rent commencement date, such new or
23 renewal tenant employs fifty or fewer employees in the eligible prem-
24 ises, the initial lease term is for a period of at least five years,
25 provided, however, that with respect to a lease commencing on or after
26 July first, nineteen hundred ninety-six if, by the sixtieth day follow-
27 ing the rent commencement date, such new or renewal tenant employs one
28 hundred twenty-five or fewer employees in the eligible premises, the
29 initial lease term is for a period of at least five years, and provided,
30 further, that with respect to a lease commencing on or after April
31 first, nineteen hundred ninety-seven if, by the sixtieth day following
32 the rent commencement date, such new or renewal tenant employs one
33 hundred twenty-five or fewer employees in the eligible premises, the
34 initial lease term is for a period of at least three years, or (II) if,
35 by the sixtieth day following the rent commencement date, such new or
36 renewal tenant employs more than fifty employees in the eligible prem-
37 ises, the initial lease term is for a period of at least ten years,
38 provided, however, that with respect to a lease commencing on or after
39 July first, nineteen hundred ninety-six if, by the sixtieth day follow-
40 ing the rent commencement date, such new or renewal tenant employs more
41 than one hundred twenty-five employees in the eligible premises, the
42 initial lease term is for a period of at least ten years; or

43 (ii) the landlord enters into a lease with an expansion tenant for
44 expansion premises and: (A) the lease commencement date is within the
45 eligibility period; (B) if the expansion premises are located in the
46 eligible building previously occupied by such expansion tenant, the
47 lease term for the premises in the eligible building previously occupied
48 by such expansion tenant will expire no earlier than the expiration date
49 of the initial lease term for the expansion premises, provided that
50 where such expansion tenant occupies premises in the eligible building
51 under more than one lease, the provisions of this subclause shall be
52 applied with reference to the lease for the premises containing the
53 largest amount of square feet, provided, however, that this subclause
54 shall not apply to a lease commencing on or after July first, nineteen
55 hundred ninety-six; and (C) (I) if, by the sixtieth day following the
56 rent commencement date, such expansion tenant employs fifty or fewer

1 employees in the eligible building in which the expansion premises are
2 located, the initial lease term for the expansion premises is for a
3 period of at least five years, provided, however, that with respect to a
4 lease commencing on or after July first, nineteen hundred ninety-six if,
5 by the sixtieth day following the rent commencement date, such expansion
6 tenant employs one hundred twenty-five or fewer employees in the expansion
7 premises, the initial lease term for the expansion premises is for
8 a period of at least five years, and provided, further, that with
9 respect to a lease commencing on or after April first, nineteen hundred
10 ninety-seven if, by the sixtieth day following the rent commencement
11 date, such expansion tenant employs one hundred twenty-five or fewer
12 employees in the expansion premises, the initial lease term for the
13 expansion premises is for a period of at least three years, or (II) if,
14 by the sixtieth day following the rent commencement date, such expansion
15 tenant employs more than fifty employees in such eligible building, the
16 initial lease term for the expansion premises is for a period of at
17 least ten years, provided, however, that with respect to a lease
18 commencing on or after July first, nineteen hundred ninety-six if, by
19 the sixtieth day following the rent commencement date, such expansion
20 tenant employs more than one hundred twenty-five employees in the expansion
21 premises, the initial lease term for the expansion premises is for
22 a period of at least ten years.

23 (b) Notwithstanding anything in this subdivision to the contrary, with
24 respect to premises located in an eligible government-owned building, no
25 certificate of eligibility shall be issued and no special reduction
26 shall be allowed under this subdivision if: (i) the tenant has relo-
27 cated to such premises from any area in the borough of Manhattan north
28 of the center line of 96th street or from any portion of the boroughs of
29 the Bronx, Brooklyn, Queens, or Staten Island; or (ii) the lease for
30 such premises provides that during the initial lease term required under
31 subparagraph (a) of this paragraph either the landlord or the tenant may
32 terminate such lease prior to the expiration of such required initial
33 lease term, provided that such lease may provide that either the land-
34 lord or the tenant may terminate such lease if (A) the other party is in
35 default of any of such party's obligations under the lease, (B) the
36 eligible premises are damaged or destroyed by fire or other casualty,
37 (C) the eligible premises are rendered unusable for any reason not
38 attributable to any act or failure to act of either tenant or landlord
39 or (D) the eligible premises are acquired by eminent domain.

40 (c) For purposes of this paragraph, the expiration date of a lease
41 shall be determined by the expiration date set forth in such lease,
42 without giving effect to any rights of the landlord or the tenant to
43 terminate such lease prior to the expiration date set forth therein.

44 (5) (a) (i) With respect to premises located in an eligible govern-
45 ment-owned building, an application for a certificate of eligibility
46 entitling a tenant to claim the special reduction allowed by this subdivi-
47 sion shall be filed by such tenant with the department of finance on
48 or after the date on which the lease for the eligible premises is
49 executed by the landlord and tenant but in no event more than one
50 hundred eighty days following the later of the rent commencement date or
51 the date that chapter four of the laws of nineteen hundred ninety-five
52 became a law, and no such certificate of eligibility shall be issued
53 unless such application is filed within such time.

54 (ii) Notwithstanding clause (i) of this subparagraph and any other
55 provision of law to the contrary, with respect to a lease commencing on
56 or after July first, nineteen hundred ninety-six in premises located in

1 an eligible government-owned building, an application for a certificate
2 of eligibility entitling a tenant to claim the special reduction allowed
3 by this subdivision shall be filed by such tenant with the department of
4 finance on or after the date on which the lease for the eligible prem-
5 ises is executed by the landlord and tenant but in no event more than
6 one hundred eighty days following the rent commencement date or sixty
7 days following the date that the chapter of the laws of nineteen hundred
8 ninety-seven that added this clause became a law, whichever is later,
9 and no such certificate of eligibility shall be issued unless such
10 application is filed within such time.

11 (iii) Notwithstanding any other provisions of law to the contrary, an
12 application for the special reduction allowed by subparagraph (b-2) of
13 paragraph two of this subdivision shall be considered timely filed if
14 filed by such tenant with the department of finance on or after the date
15 on which the lease for the eligible premises is executed by the landlord
16 and tenant but in no event more than one hundred eighty days following
17 the rent commencement date or by May thirtieth, two thousand fourteen,
18 whichever is later, and no such special reduction shall be permitted
19 unless such application is filed within such time.

20 (b) In addition to any other information required by the department of
21 finance, such application for a certificate of eligibility shall include
22 (i) an abstract of the lease for the eligible taxable premises, which
23 shall include the lease commencement date, the rent commencement date
24 and the expiration date of such lease, (ii) a statement as to the number
25 of persons employed by the tenant in the eligible taxable premises and,
26 where applicable, in the eligible building containing such premises, by
27 the sixtieth day following the rent commencement date, (iii) a statement
28 as to the location of all office or retail space in the city occupied by
29 the tenant prior to the execution of the lease for the eligible taxable
30 premises and the commencement and expiration dates of all leases for
31 such office or retail space located in the abatement zone. Such applica-
32 tion shall also state that the tenant agrees to comply with and be
33 subject to such rules as may be issued from time to time by the depart-
34 ment of finance.

35 (c) The department of finance shall issue a certificate of eligibility
36 upon determining that an application filed pursuant to this paragraph
37 meets the requirements set forth in this subdivision, provided, however,
38 that no such certificate of eligibility shall be issued if any payments
39 in lieu of taxes, water or sewer charges or other lienable charges are
40 due and owing with respect to such eligible government-owned building at
41 the time such application is pending, unless such payments in lieu of
42 taxes or charges are at such time being paid in timely installments
43 pursuant to a written agreement with the department of finance or other
44 appropriate agency.

45 (d) The burden of proof shall be on the tenant to show by clear and
46 convincing evidence that the requirements for granting a certificate of
47 eligibility have been satisfied. The department of finance shall have
48 the authority to require that statements in connection with applications
49 pursuant to this paragraph be made under oath.

50 (e) The department of finance may provide by rule for the payment by
51 tenants of premises in eligible government-owned buildings of reasonable
52 administrative charges or fees necessary to defray expenses in
53 connection with the determination of initial and continuing eligibility
54 for the special reduction allowed by this subdivision.

55 (6) (a) If an eligible tenant (i) sublets any portion of the eligible
56 taxable premises to any other person, or (ii) otherwise ceases to occupy

1 or use any portion of the premises as eligible taxable premises, such
2 tenant shall, immediately upon the occurrence of any such event, cease
3 to be eligible for the special reduction allowed by this subdivision
4 with respect to the portion of the premises which is sublet or which
5 ceases to be occupied or used by such tenant as eligible taxable prem-
6 ises, and for any period following the occurrence of any such event, the
7 special reduction otherwise allowed by this subdivision shall be reduced
8 by an amount determined by multiplying the amount of such special
9 reduction by the percentage of the premises which is sublet or which has
10 ceased to be occupied or used as eligible taxable premises.

11 Such tenant shall give written notice of the occurrence of any such
12 event to the department of finance within thirty days thereof. If the
13 tenant fails to give such notice, an assessment of any additional tax
14 that may become due as a result of the occurrence of any such event may
15 be made at any time, notwithstanding anything in section 11-717 of this
16 chapter to the contrary.

17 (b) Notwithstanding anything in this chapter to the contrary, a tenant
18 claiming the special reduction allowed by this subdivision shall file a
19 return for each tax period with respect to which such special reduction
20 is claimed. Each such return shall contain a certification by the
21 tenant, in such form as the department of finance may prescribe, to the
22 effect that such tenant meets all the requirements of this subdivision,
23 and no special reduction shall be allowed if such return does not
24 contain such certification by such tenant.

25 (c) If any special reduction allowed under this subdivision was
26 obtained by a tenant as a result of having made a false or misleading
27 statement as to a material fact or having omitted to state any material
28 fact necessary in order to make such statement not false or misleading,
29 no such special reduction shall be allowed and any additional tax that
30 becomes due as a result of such disallowance may be assessed at any
31 time, notwithstanding anything in section 11-717 of this chapter to the
32 contrary. In addition, the department of finance may declare any such
33 tenant to be ineligible to claim any special reduction under this subdivi-
34 sion in the future with respect to the same or any other premises.

35 7. A determination by the department of finance pursuant to subdivi-
36 sion six of section four hundred ninety-nine-f of the real property tax
37 law to deny, terminate or revoke any abatement applied for or granted
38 pursuant to title four of article four of the real property tax law
39 based on the relationship between the landlord and the tenant shall not
40 be dispositive of whether such tenant is eligible for a special
41 reduction under this subdivision. The department of finance may deter-
42 mine that such tenant is eligible for a special reduction under this
43 subdivision and may issue a certificate of eligibility to such tenant in
44 accordance with the procedures and pursuant to the standards applicable
45 to a tenant of premises located in an eligible government-owned build-
46 ing, provided, however, that any application filed pursuant to paragraph
47 five of this subdivision by a tenant whose application for a certificate
48 of abatement pursuant to title four of article four of the real property
49 tax law was denied by the department of finance pursuant to subdivision
50 six of section four hundred ninety-nine-f of the real property tax law
51 based on the relationship between the landlord and the tenant, or by a
52 tenant whose application for a certificate of abatement pursuant to
53 title four of article four of the real property tax law was granted by
54 the department of finance, but whose abatement was terminated or revoked
55 by the department of finance pursuant to subdivision six of section four
56 hundred ninety-nine-f of the real property tax law based on the

1 relationship between the landlord and the tenant, may be deemed by the
 2 department of finance to have been filed on the date the application for
 3 such certificate of abatement was filed. This paragraph shall only apply
 4 to leases commencing on or after April first, nineteen hundred ninety-
 5 seven.

6 § 11-704.2 Special credit. A tenant whose base rent for the tax year
 7 beginning June first, nineteen hundred ninety-three and ending May thir-
 8 ty-first, nineteen hundred ninety-four is at least eleven thousand
 9 dollars per year but not in excess of thirteen thousand nine hundred
 10 ninety-nine dollars per year shall be allowed a credit against the tax
 11 imposed by this chapter for such tax year, such credit shall be equal to
 12 twenty-five percent of the tax imposed on such base rent for such tax
 13 year. Where the base rent of a tenant is for a period of less than one
 14 year, such base rent shall, for purposes of this section, be determined
 15 as if it had been on an equivalent basis for the entire year. The credit
 16 allowed under this section shall be deducted prior to the deduction of
 17 any credit allowable under section 11-704.1 of this chapter.

18 § 11-704.3 Tax credit. (a) (1) For the period beginning September
 19 first, nineteen hundred ninety-five and ending May thirty-first, nine-
 20 teen hundred ninety-six, a credit shall be allowed against the tax
 21 imposed by this chapter, such credit to be determined in accordance with
 22 the following table:

23	If the tenant's annualized		The credit shall be an amount equal
24	base rent for such period is:		to the following percentage of the
25			tax imposed on such annualized base
26			rent for such period:
27	At least:	But not over:	
28	\$40,000	\$44,999	80%
29	\$45,000	\$49,999	60%
30	\$50,000	\$54,999	40%
31	\$55,000	\$59,999	20%

32 If the tenant's annualized base rent for such period is over fifty-
 33 nine thousand nine hundred ninety-nine dollars, no credit shall be
 34 allowed under this paragraph.

35 (2) For the tax year beginning June first, nineteen hundred ninety-six
 36 and ending May thirty-first, nineteen hundred ninety-seven, a credit
 37 shall be allowed against the tax imposed by this chapter, such credit to
 38 be determined in accordance with the following table:

39	If the tenant's base rent is:		The credit shall be an amount equal
40			to the following percentage of the
41			tax imposed on such base rent for
42			the tax year:
43	At least:	But not over:	
44	\$40,000	\$44,999	80%
45	\$45,000	\$49,999	60%
46	\$50,000	\$54,999	40%
47	\$55,000	\$59,999	20%

48 If the tenant's base rent is over fifty-nine thousand nine hundred
 49 ninety-nine dollars, no credit shall be allowed under this paragraph.

50 (3) For each tax year beginning on or after June first, nineteen
 51 hundred ninety-seven and ending on or before May thirty-first, two thou-

1 sand, a credit shall be allowed against the tax imposed by this chapter,
2 such credit to be determined in accordance with the following table:

3	If the tenant's base rent is:		The credit shall be an amount equal
4			to the following percentage of the
5			tax imposed by this chapter for the
6			tax year:
7	At least:	But not over:	
8	\$100,000	\$109,999	80%
9	\$110,000	\$119,999	60%
10	\$120,000	\$129,999	40%
11	\$130,000	\$139,999	20%

12 If the tenant's base rent is over one hundred thirty-nine thousand
13 nine hundred ninety-nine dollars, no credit shall be allowed under this
14 paragraph. For purposes of this paragraph, 'base rent' shall be calcu-
15 lated without regard to any reduction in base rent allowed by paragraph
16 two of subdivision h of section 11-704 of this chapter.

17 (4) For the period beginning June first, two thousand and ending
18 November thirtieth, two thousand, a credit shall be allowed against the
19 tax imposed by this chapter, such credit to be determined in accordance
20 with the following table:

21	If the tenant's annualized		The credit shall be an amount equal
22	base rent for such period is:		to the following percentage of the
23			tax imposed on such annualized base
24			rent for such period:
25	At least:	But not over:	
26	\$100,000	\$109,999	80%
27	\$110,000	\$119,999	60%
28	\$120,000	\$129,999	40%
29	\$130,000	\$139,999	20%

30 If the tenant's annualized base rent for such period is over one
31 hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit
32 shall be allowed under this paragraph. For purposes of this paragraph
33 'base rent' shall be calculated without regard to any reduction in base
34 rent allowed by paragraph two of subdivision h of section 11-704 of this
35 chapter.

36 (5) For the period beginning December first, two thousand and ending
37 May thirty-first, two thousand one, a credit shall be allowed against
38 the tax imposed by this chapter, such credit to be determined in accord-
39 ance with the following table:

40	If the tenant's annualized		The credit shall be an amount equal
41	base rent for such period is:		to the following percentage of the
42			tax imposed on such annualized base
43			rent for such period:
44	At least:	But not over:	
45	\$150,000	\$159,999	80%
46	\$160,000	\$169,999	60%
47	\$170,000	\$179,999	40%
48	\$180,000	\$189,999	20%

49 If the tenant's annualized base rent for such period is over one
50 hundred eighty-nine thousand nine hundred ninety-nine dollars, no credit

1 shall be allowed under this paragraph. For purposes of this paragraph,
2 'base rent' shall be calculated without regard to any reduction in base
3 rent allowed by paragraph two of subdivision h of section 11-704 of this
4 chapter.

5 (6) For each tax year beginning on or after June first, two thousand
6 one, a credit shall be allowed against the tax imposed by this chapter
7 as follows: a tenant whose base rent is at least two hundred and fifty
8 thousand dollars but not more than three hundred thousand dollars shall
9 be allowed a credit in an amount determined by multiplying three and
10 nine-tenths percent of base rent by a fraction the numerator of which is
11 three hundred thousand dollars minus the amount of base rent and the
12 denominator of which is fifty thousand dollars. If the tenant's base
13 rent is over three hundred thousand dollars, no credit shall be allowed
14 under this paragraph. For purposes of this paragraph, 'base rent' shall
15 be calculated without regard to any reduction in base rent allowed by
16 paragraph two of subdivision h of section 11-704 of this chapter.

17 (b) (1) Where the base rent of a tenant is for a period of less than
18 one year, such base rent shall, for purposes of this section, be deter-
19 mined as if it had been on an equivalent basis for the entire year. The
20 credits allowed under this section shall be deducted prior to the
21 deduction of any credit allowable under section 11-704.1 of this chap-
22 ter.

23 (2) For purposes of paragraphs four and five of subdivision (a) of
24 this section, base rent for the period specified in each of such para-
25 graphs shall be separately annualized as if it had been on an equivalent
26 basis for an entire year, irrespective of the actual base rent for the
27 tax year including the period specified in such paragraph.

28 § 11-704.4. Small business tax credit. a. As used in this section, the
29 following terms have the following meanings:

30 1. Income factor. The term "income factor" shall mean:

31 (i) for a tenant with total income of not more than five million
32 dollars, one;

33 (ii) for a tenant with total income of more than five million dollars
34 but not more than ten million dollars, a fraction the numerator of which
35 is ten million dollars minus the amount of total income and the denomi-
36 nator of which is five million dollars; and

37 (iii) for a tenant with total income of more than ten million dollars,
38 zero.

39 2. Rent factor. The term "rent factor" shall mean:

40 (i) for a tenant whose small business tax credit base rent is less
41 than five hundred thousand dollars, one; and

42 (ii) for a tenant whose small business tax credit base rent is at
43 least five hundred thousand dollars but not more than five hundred fifty
44 thousand dollars, a fraction the numerator of which is five hundred
45 fifty thousand dollars minus the amount of small business tax credit
46 base rent and the denominator of which is fifty thousand dollars.

47 3. Small business tax credit base rent. The term "small business tax
48 credit base rent" shall mean the base rent calculated without regard to
49 any reduction in base rent allowed by paragraph two of subdivision h of
50 section 11-704 of this chapter.

51 4. Total income. The term "total income" shall mean the amount
52 reported by a person, as defined by section seven thousand seven hundred
53 one of the internal revenue code, to the internal revenue service for
54 the purpose of the federal income tax in the tax year immediately
55 preceding the period for which the tenant is applying for the credit set
56 forth in subdivision b that is equal to the gross receipts or sales of

1 the person minus any returns and allowances, minus the cost of goods
2 sold plus the amount of any dividends, interest, gross rents, gross
3 royalties, capital gain net income, net gain or loss from the sale of
4 business property, net farm profit or loss, ordinary income or loss from
5 other partnerships, estates or trusts or other income or loss; except
6 that, if the tenant is a limited liability company or other business
7 entity that is not separate from its owner for federal income tax
8 purposes under section 301.7701-2(c)(2) of title 26 of the code of
9 federal regulations, total income as defined in this section shall mean
10 the total income of the person that reports the activities of the tenant
11 as its sole owner for federal income tax purposes.

12 b. Beginning on June first, two thousand eighteen and for each tax
13 year beginning thereafter, a credit shall be allowed against the tax
14 imposed by this chapter as follows: a tenant whose small business tax
15 credit base rent is at least two hundred fifty thousand dollars but not
16 more than five hundred fifty thousand dollars shall be allowed a credit
17 in the amount determined by multiplying the tax imposed on the tenant
18 pursuant to section 11-702 of this chapter minus any allowable credits
19 or exemptions set forth outside this section by the income factor and by
20 the rent factor. If the tenant's small business tax credit base rent is
21 over five hundred fifty thousand dollars, no credit shall be allowed
22 under this section.

23 c. The department of finance may promulgate any rules necessary to
24 implement the provisions of this section, including, but not limited to,
25 rules that prevent abuse of this section by related parties.

26 § 11-705 Returns. a. Every tenant subject to tax under this chapter
27 shall file with the commissioner of finance a return with respect to the
28 taxes payable for the three month periods ending on the last days of
29 August, November and February of each year and a final return with
30 respect to the taxes payable for the tax year ending on the last day of
31 May of each year. Such returns shall be filed within twenty days from
32 the expiration of the period covered thereby. A tenant who is exempt
33 from the tax by reason of paragraph two of subdivision b of section
34 11-704 of this chapter shall nevertheless be required to file a final
35 return, provided, however, that for tax years beginning on or after June
36 first, nineteen hundred ninety-five and ending on or before May thirty-
37 first, nineteen hundred ninety-seven, no such final return shall be
38 required from such exempt tenant with respect to taxable premises if (1)
39 the tenant's rent for such premises, determined without regard to any
40 deduction from or reduction in rent or base rent allowed by this chap-
41 ter, does not exceed fifteen thousand dollars for the tax year and (2)
42 in the case of a tenant who has more than one taxable premises, the
43 aggregate rents for all such premises, determined without regard to any
44 deduction from or reduction in rent or base rent allowed by this chap-
45 ter, do not exceed fifteen thousand dollars for the tax year. For tax
46 years beginning on June first, nineteen hundred ninety-seven and ending
47 on or before May thirty-first, two thousand one, no such final return
48 shall be required from such exempt tenant with respect to any taxable
49 premises if (1) the tenant's rent for such premises, determined without
50 regard to any deduction from or reduction in rent or base rent allowed
51 by this chapter, does not exceed seventy-five thousand dollars for the
52 tax year and (2) the amount of rent received or due from any subtenant
53 of such exempt tenant with respect to such premises does not exceed
54 seventy-five thousand dollars for the tax year. For tax years beginning
55 on or after June first, two thousand one, no such final return shall be
56 required from such exempt tenant with respect to any taxable premises if

1 (1) the tenant's rent for such premises, determined without regard to
2 any deduction from or reduction in rent or base rent allowed by this
3 chapter, does not exceed two hundred thousand dollars for the tax year
4 and (2) the amount of rent received or due from any subtenant of such
5 exempt tenant with respect to such premises does not exceed two hundred
6 thousand dollars for the tax year. Notwithstanding anything in this
7 subdivision to the contrary, for tax periods beginning on or after
8 September first, nineteen hundred ninety-five, no return shall be
9 required pursuant to this subdivision with respect to any taxable prem-
10 ises located in that part of the city specified in paragraph one of
11 subdivision h of section 11-704 of this chapter, and no such taxable
12 premises shall be taken into account for purposes of clause two of this
13 subparagraph. The commissioner of finance may permit or require returns,
14 including final returns, to be made for other periods and upon such
15 dates as the commissioner may specify and if he or she deems it neces-
16 sary, in order to insure the payment of the tax imposed by this chapter,
17 the commissioner may require such returns to be made for shorter periods
18 than those prescribed by this subdivision of this section, and upon such
19 dates as he or she may specify.

20 b. The commissioner of finance may by regulation require the filing
21 of information returns and supplemental information returns by landlords
22 and by tenants of taxable premises, whether or not they are required to
23 pay the tax imposed by this chapter, upon such dates or at such times as
24 the commissioner may specify if he or she deems the filing of such
25 information returns necessary for proper administration of this chapter.

26 c. The form of returns and information returns shall be prescribed by
27 the commissioner of finance and shall contain such information as the
28 commissioner may deem necessary for the proper administration of this
29 chapter. The commissioner of finance may require amended returns or
30 amended information returns to be filed within twenty days after notice
31 and to contain the information specified in the notice.

32 d. If a return or information return is not filed, or if a return of
33 any kind when filed is incorrect or insufficient on its face, the
34 commissioner of finance shall take the necessary steps to enforce the
35 filing of such a return or of a corrected return.

36 § 11-706 Payment of tax. a. The tax imposed by this chapter shall be
37 due and payable on or before the twentieth day of the calendar month
38 following the end of each tax period and shall be paid to the commis-
39 sioner of finance, as follows: The tax to be paid at such time shall be
40 based on the base rent for such tax period and the rate of tax shall be
41 the one which would be applicable if the base rent for such period were
42 the same for each tax period during the tax year, except that the
43 payment required to be made together with the final return or at the
44 time that the final return should be filed shall be the amount by which
45 the actual tax for the tax year exceeds the amounts previously paid for
46 the tax year.

47 b. Where the final return shows that the amount of tax paid for the
48 tax year exceeds the actual tax for such year, the commissioner of
49 finance shall make the appropriate refund as promptly as possible,
50 provided, however, that where the commissioner of finance has reason to
51 believe that the final return is inaccurate, the commissioner may with-
52 hold the refund in whole or in part. The making of a refund pursuant to
53 this subdivision shall not prevent the commissioner of finance from
54 making a determination that additional tax is due or from pursuing any
55 other method to recover the full amount of the actual tax due for the
56 tax year.

1 c. Where a tenant ceases to do business the tax, as measured by the
2 tenant's base rent for the prior part of the tax year, shall be due
3 immediately, and the tenant shall file a final return, but, should the
4 tenant continue to pay rent for the taxable premises, the tenant shall
5 file the normally required returns and a final return for the tax year,
6 provided, however, that any such tax payment shall be applied in
7 reduction of the tax payments required to be made with such returns or
8 with the final return for such tax year.

9 § 11-707 Records to be kept. Every landlord of taxable premises and
10 every tenant of taxable premises shall keep records of rent paid and
11 received by him or her in such form as the commissioner of finance may
12 by regulation require, all leases or agreements which fix the rents or
13 rights of tenants of taxable premises, and such other records, receipts
14 and other papers relevant to the ascertainment of the tax due under this
15 chapter as the commissioner of finance may by regulation require. Such
16 records shall be offered for inspection and examination at any time upon
17 demand by the commissioner of finance. Such records, unless the commis-
18 sioner of finance consents to a sooner destruction or requires that they
19 be kept for a longer time, shall be preserved for a period of three
20 years except that leases or agreements which fix the rents or rights of
21 a tenant shall be kept for a period of three years after the expiration
22 of the tenancy thereunder.

23 § 11-708 Determination of tax. If a return required by this chapter is
24 not filed, or if a return when filed is incorrect or insufficient, the
25 commissioner of finance shall determine the amount of tax due from such
26 information as may be obtainable and, if necessary, may estimate the tax
27 on the basis of external indices. Notice of such determination shall be
28 given to the person liable for the payment of the tax. Such determi-
29 nation shall finally and irrevocably fix the tax unless the person
30 against whom it is assessed, within ninety days after the giving of
31 notice of such determination or, if the commissioner of finance has
32 established a conciliation procedure pursuant to section 11-124 of this
33 title and the taxpayer has requested a conciliation conference in
34 accordance therewith, within ninety days from the mailing of a concil-
35 iation decision or the date of the commissioner's confirmation of the
36 discontinuance of the conciliation proceeding, both (1) serves a peti-
37 tion upon the commissioner of finance and (2) files a petition with the
38 tax appeals tribunal for a hearing, or unless the commissioner of
39 finance of the commissioner's own motion shall redetermine the same.
40 Such hearing and any appeal to the tax appeals tribunal sitting en banc
41 from the decision rendered in such hearing shall be conducted in the
42 manner and subject to the requirements prescribed by the tax appeals
43 tribunal pursuant to sections one hundred sixty-eight through one
44 hundred seventy-two of the charter of the preceding municipality as it
45 existed January first, nineteen hundred ninety-four. After such hearing
46 the tax appeals tribunal shall give notice of its decision to the person
47 against whom the tax is assessed and to the commissioner of finance. A
48 decision of the tax appeals tribunal sitting en banc shall be reviewable
49 for error, illegality or unconstitutionality or any other reason whatso-
50 ever by a proceeding under article seventy-eight of the civil practice
51 law and rules if application therefor is made to the supreme court by
52 the person against whom the tax was assessed within four months after
53 the giving of the notice of such tax appeals tribunal decision,
54 provided, however, that any such proceeding under article seventy-eight
55 of the civil practice law and rules shall not be instituted by a taxpay-
56 er unless: (a) the amount of any tax sought to be reviewed, with inter-

1 est and penalties thereon, if any, shall be first deposited and there is
2 filed an undertaking with the commissioner of finance, issued by a sure-
3 ty company authorized to transact business in this state and approved by
4 the superintendent of insurance of this state as to solvency and respon-
5 sibility, in such amount as a justice of the supreme court shall approve
6 to the effect that if such proceeding be dismissed or the tax confirmed
7 the taxpayer will pay all costs and charges which may accrue in the
8 prosecution of such proceeding or (b) at the option of the taxpayer such
9 undertaking may be in a sum sufficient to cover the taxes, interest and
10 penalties stated in such decision plus the costs and charges which may
11 accrue against it in the prosecution of the proceeding, in which event
12 the taxpayer shall not be required to pay such taxes, interest or penal-
13 ties as a condition precedent to the application.

14 § 11-709 Refunds. a. In the manner provided in this section the
15 commissioner of finance shall refund or credit, without interest, any
16 tax, penalty or interest erroneously, illegally or unconstitutionally
17 collected or paid, if written application to the commissioner of finance
18 for such refund shall be made within eighteen months from the date fixed
19 by this chapter for filing the return on which such payment was based or
20 within six months of the payment thereof, whichever of such periods
21 expire the later. Whenever a refund or credit is made or denied, the
22 commissioner of finance shall state his or her reason therefor and give
23 notice thereof to the taxpayer in writing. The commissioner of finance
24 may, in lieu of any refund required to be made, allow credit therefor on
25 payments due from the applicant.

26 b. Any determination of the commissioner of finance denying a refund
27 or credit pursuant to subdivision a of this section shall be final and
28 irrevocable unless the applicant for such refund or credit, within nine-
29 ty days from the mailing of notice of such determination, or, if the
30 commissioner of finance has established a conciliation procedure pursu-
31 ant to section 11-124 of this title and the applicant has requested a
32 conciliation conference in accordance therewith, within ninety days from
33 the mailing of a conciliation decision or the date of the commissioner's
34 confirmation of the discontinuance of the conciliation proceeding, both
35 (1) serves a petition upon the commissioner of finance and (2) files a
36 petition with the tax appeals tribunal for a hearing. Such petition for
37 a refund or credit, made as herein provided, shall be deemed an applica-
38 tion for a revision of any tax, penalty or interest complained of. Such
39 hearing of any appeal to the tax appeals tribunal sitting en banc from
40 the decision rendered in such hearing shall be conducted in the manner
41 and subject to the requirements prescribed by the tax appeals tribunal
42 pursuant to section one hundred sixty-eight through one hundred seven-
43 ty-two of the charter of the preceding municipality as it existed Janu-
44 ary first, nineteen hundred ninety-four. After such hearing, the tax
45 appeals tribunal shall give notice of its decision to the applicant and
46 to the commissioner of finance. The applicant shall be entitled to
47 institute a proceeding pursuant to article seventy-eight of the civil
48 practice law and rules to review a decision of the tax appeals tribunal
49 sitting en banc if application to the supreme court be made therefor
50 within four months after the giving of notice of such decision, and
51 provided, in the case of an application by a taxpayer, that a final
52 determination of tax due was not previously made. Such a proceeding
53 shall not be instituted by a taxpayer unless an undertaking shall first
54 be filed with the commissioner of finance, in such amount and with such
55 sureties as a justice of the supreme court shall approve, to the effect
56 that if such proceeding be dismissed or the tax confirmed, the taxpayer

1 will pay all costs and charges which may accrue in the prosecution of
2 the proceeding.

3 c. A person shall not be entitled to a revision, refund or credit
4 under this section of a tax, interest or penalty which had been deter-
5 mined to be due pursuant to the provisions of section 11-708 of this
6 chapter where such person has had a hearing or an opportunity for a
7 hearing, as provided in said section, or has failed to avail himself or
8 herself of the remedies therein provided. No refund or credit shall be
9 made of a tax, interest or penalty paid after a determination by the
10 commissioner of finance made pursuant to section 11-708 of this chapter
11 unless it be found that such determination was erroneous, illegal or
12 unconstitutional, or otherwise improper, by the tax appeals tribunal
13 after a hearing, or, if such tax appeals tribunal affirms in whole or in
14 part the determination of the commissioner of finance, in a proceeding
15 under article seventy-eight of the civil practice law and rules, pursu-
16 ant to the provisions of said section, in which event refund or credit
17 without interest shall be made of the tax, interest or penalty found to
18 have been overpaid.

19 § 11-710 Remedies exclusive. The remedies provided by this chapter
20 shall be the exclusive remedies available to any person for the review
21 of tax liability imposed by this chapter; and no determination or
22 proposed determination of tax or determination on any application for
23 refund by the commissioner of finance, nor any decision by the tax
24 appeals tribunal or any of its administrative law judges, shall be
25 enjoined or reviewed by an action for declaratory judgment, an action
26 for money had and received or by any action or proceeding other than, in
27 the case of a decision by the tax appeals tribunal sitting en banc, a
28 proceeding under article seventy-eight of the civil practice law and
29 rules; provided, however, that a taxpayer may proceed by declaratory
30 judgment if he or she institutes suit within thirty days after a defi-
31 ciency assessment is made and pays the amount of the deficiency assess-
32 ment to the commissioner of finance prior to the institution of such
33 suit and posts a bond for costs as provided in section 11-708 of this
34 chapter.

35 § 11-711 Reserves. In cases where the taxpayer has applied for a
36 refund and has instituted a proceeding under article seventy-eight of
37 the civil practice law and rules to review a determination adverse to
38 the taxpayer on his or her application for refund, the comptroller shall
39 set up appropriate reserves to meet any decision adverse to the city.

40 § 11-712 Proceedings to recover tax. a. Whenever any person shall
41 fail to pay any tax or penalty or interest imposed by this chapter as
42 herein provided, the corporation counsel shall, upon the request of the
43 commissioner of finance, bring or cause to be brought an action to
44 enforce payment of the same against the person liable for the same on
45 behalf of the city of Staten Island in any court of the state of New
46 York or of any other state or of the United States. If, however, the
47 commissioner of finance in his or her discretion believes that a
48 taxpayer subject to the provisions of this chapter is about to cease
49 business, leave the state or remove or dissipate the assets out of which
50 tax or penalties might be satisfied and that any such tax or penalty
51 will not be paid when due, he or she may declare such tax or penalty to
52 be immediately due and payable and may issue a warrant immediately.

53 b. As an additional or alternate remedy, the commissioner of finance
54 may issue a warrant, directed to the city sheriff commanding the sheriff
55 to levy upon and sell the real and personal property of such person
56 which may be found within the city, for the payment of the amount there-

1 of, with any penalties and interest, and the cost of executing the
2 warrant, and to return such warrant to the commissioner of finance and
3 to pay to the commissioner the money collected by virtue thereof within
4 sixty days after the receipt of such warrant. The city sheriff shall,
5 within five days after the receipt of the warrant, file with the county
6 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
7 ment docket the name of the person mentioned in the warrant and the
8 amount of the tax, penalties and interest for which the warrant is
9 issued and the date when such copy is filed. Thereupon the amount of
10 such warrant so docketed shall become a lien upon the title to and
11 interest in real and personal property of the person against whom the
12 warrant is issued. The city sheriff shall then proceed upon the warrant
13 in the same manner and with like effect as that provided by law in
14 respect to executions issued against property upon judgments of a court
15 of record, and for services in executing the warrant the sheriff shall
16 be entitled to the same fees which the sheriff may collect in the same
17 manner. In the discretion of the commissioner of finance a warrant of
18 like terms, force and effect may be issued and directed to any officer
19 or employee of the department of finance, and in the execution thereof
20 such officer or employee shall have all the powers conferred by law upon
21 sheriffs, but he or she shall be entitled to no fee or compensation in
22 excess of the actual expenses paid in the performance of such duty. If
23 a warrant is returned not satisfied in full, the commissioner of finance
24 may from time to time issue new warrants and shall also have the same
25 remedies to enforce the amount due thereunder as if the city had recov-
26 ered judgment therefor and execution thereon had been returned unsatis-
27 fied.

28 c. Whenever there is made a sale, transfer or assignment in bulk of
29 any part or the whole of a stock of merchandise or of fixtures, or
30 merchandise and of fixtures pertaining to the conducting of the business
31 of the seller, transferor or assignor, otherwise than in the ordinary
32 course of trade and in the regular prosecution of said business, the
33 purchaser, transferee or assignee shall at least ten days before taking
34 possession of such merchandise, fixtures, or merchandise and fixtures,
35 or paying therefor, notify the commissioner of finance by registered
36 mail of the proposed sale and of the price, terms and conditions thereof
37 whether or not the seller, transferor or assignor, has represented to,
38 or informed the purchaser, transferee or assignee that it owes any tax
39 pursuant to this chapter and whether or not the purchaser, transferee or
40 assignee has knowledge that such taxes are owing, and whether any such
41 taxes are in fact owing.

42 Whenever the purchaser, transferee or assignee shall fail to give
43 notice to the commissioner of finance as required by the opening para-
44 graph of this subdivision, or whenever the commissioner of finance shall
45 inform the purchaser, transferee or assignee that a possible claim for
46 such tax or taxes exists, any sums of money, property or choses in
47 action, or other consideration, which the purchaser, transferee or
48 assignee is required to transfer over to the seller, transferor or
49 assignor shall be subject to a first priority right and lien for any
50 such taxes theretofore or thereafter determined to be due from the sell-
51 er, transferor or assignor to the city, and the purchaser, transferee or
52 assignee is forbidden to transfer to the seller, transferor or assignor
53 any such sums of money, property or choses in action to the extent of
54 the amount of the city's claim. For failure to comply with the
55 provisions of this subdivision, the purchaser, transferee or assignee,
56 in addition to being subject to the liabilities and remedies imposed

1 under the provisions of former section forty-four of the personal prop-
2 erty law, shall be personally liable for the payment to the city of any
3 such taxes theretofore or thereafter determined to be due to the city
4 from the seller, transferor or assignor, and such liability may be
5 assessed and enforced in the same manner as the liability for tax under
6 this chapter.

7 d. The commissioner of finance, if he or she finds that the interests
8 of the city will not thereby be jeopardized, and upon such conditions as
9 the commissioner of finance may require, may release any property from
10 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
11 tions to tax, penalties and interest filed pursuant to subdivision b of
12 this section, and such release or vacating of the warrant may be
13 recorded in the office of any recording officer in which such warrant
14 has been filed. The clerk shall thereupon cancel and discharge as of the
15 original date of docketing the vacated warrant.

16 § 11-713 General powers of the commissioner of finance. In addition
17 to the powers granted to the commissioner of finance in this chapter,
18 the commissioner is hereby authorized and empowered:

19 1. To make, adopt and amend rules and regulations appropriate to the
20 carrying out of this chapter and the purposes thereof;

21 2. To extend, for cause shown, the time for filing any return for a
22 period not exceeding ninety days; and to compromise disputed claims in
23 connection with the taxes hereby imposed;

24 3. To request information from the tax commission of the state on New
25 York or the treasury department of the United States relative to any
26 person; and to afford information to such tax commission or such treas-
27 ury department relative to any person;

28 4. To delegate the commissioner's functions pursuant to this section
29 to a deputy commissioner of finance or other employee or employees of
30 the commissioner's department;

31 5. To assess, determine, revise and adjust the taxes imposed under
32 this chapter;

33 6. To require any tenant who uses premises for both residential
34 purposes and as taxable premises and who pays an undivided rent for the
35 entire premises so used to provide the commissioner with a signed and
36 notarized request to the United States director of internal revenue for
37 photostatic copies of the tenant's income tax return for any year when
38 the commissioner deems such income tax return necessary to determine the
39 rent ascribable to so much of such premises as is used as taxable prem-
40 ises; and, if the tenant refuses to provide the commissioner with such a
41 signed written request, to treat the rent for the entire premises as the
42 rent for so much as is used as taxable premises;

43 7. To prescribe methods for determining how much of any tenant's base
44 rent is ascribable to a use which results in a reduction of the base
45 rent or for determining any other division of rent or of use of premises
46 necessary for the determination of the base rent or the amount of base
47 rent subject to tax under this chapter;

48 8. To authorize banks or trust companies which are depositories or
49 financial agents of the city to receive and give a receipt for any tax
50 imposed under this chapter in such manner, at such times, and under such
51 conditions as the commissioner of finance may prescribe; and the commis-
52 sioner of finance shall prescribe the manner, times and conditions under
53 which the receipt of such tax by such banks and trust companies is to be
54 treated as payment of such tax to the commissioner of finance.

55 § 11-714 Administration of oaths and compelling testimony. a. The
56 commissioner of finance, the commissioner's employees duly designated

1 and authorized by the commissioner, the tax appeals tribunal and any of
2 its duly designated and authorized employees shall have power to admin-
3 ister oaths and take affidavits in relation to any matter or proceeding
4 in the exercise of their powers and duties under this chapter. The
5 commissioner of finance and the tax appeals tribunal shall have power to
6 subpoena and require the attendance of witnesses and the production of
7 books, papers and documents to secure information pertinent to the
8 performance of the duties of the commissioner or of the tax appeals
9 tribunal hereunder and of the enforcement of this chapter and to examine
10 them in relation thereto, and to issue commissions for the examination
11 of witnesses who are out of the state or unable to attend before the
12 commissioner or the tax appeals tribunal or excused from attendance.

13 b. A justice of the supreme court either in court or at chambers shall
14 have power summarily to enforce by proper proceedings the attendance and
15 testimony of witnesses and the production and examination of books,
16 papers and documents called for by the subpoena of the commissioner of
17 finance or the tax appeals tribunal under this chapter.

18 c. Cross-reference; criminal penalties. For failure to obey subpoenas
19 or for testifying falsely, see section 11-4007 of this title; for
20 supplying false or fraudulent information, see section 11-4002 of this
21 title.

22 d. The officers who serve the summons or subpoena of the commissioner
23 of finance or the tax appeals tribunal hereunder and witnesses attending
24 in response thereto shall be entitled to the same fees as are allowed to
25 officers and witnesses in civil cases in courts of record, except as
26 herein otherwise provided. Such officers shall be the city sheriff, and
27 the sheriff's duly appointed deputies or any officers or employees of
28 the department of finance or the tax appeals tribunal, designated to
29 serve such process.

30 § 11-715 Interest and penalties. (a) Interest on underpayment; quar-
31 terly return. If any amount of tax required to be paid together with a
32 return, other than the final return for a tax year, is not paid on or
33 before the last date prescribed for payment, without regard to any
34 extension of time granted for payment, interest on such amount at the
35 rate set by the commissioner of finance pursuant to subdivision (h) of
36 this section, or, if no rate is set, at the rate of seven and one-half
37 percent per annum, shall be paid for the period from such last date
38 until twenty days after the end of the tax year during which such
39 payments were due or until such prior time as the tax paid for the tax
40 year equals seventy-five percent of the full tax required to be paid for
41 the tax year. Such interest shall be paid with the final return for the
42 tax year to which it relates. In computing the amount of interest to be
43 paid, such interest shall be compounded daily. Interest under this
44 subdivision shall not be paid if the amount thereof is less than one
45 dollar.

46 (b) Interest on underpayment; final return. If any amount of tax
47 required to be paid together with the final return for a tax year is not
48 paid on or before the last date prescribed for payment, without regard
49 to any extension of time granted for payment, interest on such amount at
50 the rate set by the commissioner of finance pursuant to subdivision (h)
51 of this section, or, if no rate is set, at the rate of seven and one-
52 half percent per annum, shall be paid for the period from such last date
53 to the date of payment. In computing the amount of interest to be paid,
54 such interest shall be compounded daily. Interest under this subdivision
55 shall not be paid if the amount thereof is less than one dollar.

1 (c) (1) Failure to file final return. (A) In case of failure to file
2 a final return under this chapter on or before the prescribed date,
3 determined with regard to any extension of time for filing, unless it is
4 shown that such failure is due to reasonable cause and not due to will-
5 ful neglect, there shall be added to the amount required to be shown as
6 tax on such return five percent of the amount of such tax if the failure
7 is for not more than one month, with an additional five percent for each
8 additional month or fraction thereof during which such failure contin-
9 ues, not exceeding twenty-five percent in the aggregate, and, in addi-
10 tion thereto, where a tenant, with respect to any taxable premises, is
11 exempt from tax by reason of paragraph two of subdivision b of section
12 11-704 of this chapter, there shall be imposed a penalty of one hundred
13 dollars.

14 (B) In the case of a failure to file a return of tax within sixty days
15 of the date prescribed for filing of such return, determined with regard
16 to any extension of time for filing, unless it is shown that such fail-
17 ure is due to reasonable cause and not due to willful neglect, the addi-
18 tion to tax under subparagraph (A) of this paragraph shall not be less
19 than the lesser of one hundred dollars or one hundred percent of the
20 amount required to be shown as tax on such return.

21 (C) For purposes of this paragraph, the amount of tax required to be
22 shown on the return shall be reduced by the amount of any part of the
23 tax which is paid on or before the date prescribed for payment of the
24 tax and by the amount of any credit against the tax which may be claimed
25 upon the return.

26 (2) Failure to pay tax shown on final return. In case of failure to
27 pay the amount shown as tax on a final return required to be filed under
28 this chapter on or before the prescribed date, determined with regard to
29 any extension of time for payment, unless it is shown that such failure
30 is due to reasonable cause and not due to willful neglect, there shall
31 be added to the amount shown as tax on such return one-half of one
32 percent of the amount of such tax if the failure is not for more than
33 one month, with an additional one-half of one percent for each addi-
34 tional month or fraction thereof during which such failure continues,
35 not exceeding twenty-five percent in the aggregate. For the purpose of
36 computing the addition for any month the amount of tax shown on the
37 return shall be reduced by the amount of any part of the tax which is
38 paid on or before the beginning of such month and by the amount of any
39 credit against the tax which may be claimed upon the return. If the
40 amount of tax required to be shown on a return is less than the amount
41 shown as tax on such return, this paragraph shall be applied by substi-
42 tuting such lower amount.

43 (3) Failure to pay tax required to be shown on final return. In case
44 of failure to pay any amount in respect of any tax required to be shown
45 on a final return required to be filed under this chapter which is not
46 so shown, including a determination made pursuant to section 11-708 of
47 this chapter, within ten days of the date of a notice and demand there-
48 for, unless it is shown that such failure is due to reasonable cause and
49 not due to willful neglect, there shall be added to the amount of tax
50 stated in such notice and demand one-half of one percent of such tax if
51 the failure is not for more than one month, with an additional one-half
52 of one percent for each additional month or fraction thereof during
53 which such failure continues, not exceeding twenty-five percent in the
54 aggregate. For the purpose of computing the addition for any month, the
55 amount of tax stated in the notice and demand shall be reduced by the

1 amount of any part of the tax which is paid before the beginning of such
2 month.

3 (4) Limitations on additions.

4 (A) With respect to any final return, the amount of the addition under
5 paragraph one of this subdivision shall be reduced by the amount of the
6 addition under paragraph two of this subdivision for any month to which
7 an addition applies under both such paragraphs one and two. In any case
8 described in subparagraph (B) of paragraph one of this subdivision, the
9 amount of the addition under such paragraph one shall not be reduced
10 below the amount provided in such subparagraph.

11 (B) With respect to any final return, the maximum amount of the addi-
12 tion permitted under paragraph three of this subdivision shall be
13 reduced by the amount of the addition under paragraph one of this subdivi-
14 sion, determined without regard to subparagraph (B) of such paragraph
15 one, which is attributable to the tax for which the notice and demand is
16 made and which is not paid within ten days of such notice and demand.

17 (d) Underpayment due to negligence. (1) If any part of an underpayment
18 of tax is due to negligence or intentional disregard of this chapter or
19 any rules or regulations hereunder, but without intent to defraud, there
20 shall be added to the tax a penalty equal to five percent of the under-
21 payment.

22 (2) There shall be added to the tax, in addition to the amount deter-
23 mined under paragraph one of this subdivision, an amount equal to fifty
24 percent of the interest payable under subdivision (b) of this section
25 with respect to the portion of the underpayment described in such para-
26 graph one which is attributable to the negligence or intentional disre-
27 gard referred to in such paragraph one, for the period beginning on the
28 last date prescribed by law for payment of such underpayment, determined
29 without regard to any extension, and ending on the date of the assess-
30 ment of the tax, or, if earlier, the date of the payment of the tax.

31 (e) Underpayment due to fraud. (1) If any part of an underpayment of
32 tax is due to fraud, there shall be added to the tax a penalty equal to
33 fifty percent of the underpayment.

34 (2) There shall be added to the tax, in addition to the penalty deter-
35 mined under paragraph one of this subdivision, an amount equal to fifty
36 percent of the interest payable under subdivision (b) of this section
37 with respect to the portion of the underpayment described in such para-
38 graph one which is attributable to fraud, for the period beginning on
39 the last date prescribed by law for payment of such underpayment, deter-
40 mined without regard to any extension, and ending on the date of the
41 assessment of the tax, or, if earlier, the date of the payment of the
42 tax.

43 (3) The penalty under this subdivision shall be in lieu of any other
44 addition to tax imposed by subdivision (c) or (d) of this section.

45 (f) Additional penalty. Any person who, with fraudulent intent, shall
46 fail to pay any tax imposed by this chapter, or to make, render, sign or
47 certify any return, or to supply any information within the time
48 required by or under this chapter, shall be liable for a penalty of not
49 more than one thousand dollars, in addition to any other amounts
50 required under this chapter to be imposed, assessed and collected by the
51 commissioner of finance. The commissioner of finance shall have the
52 power, in his or her discretion, to waive, reduce or compromise any
53 penalty under this subdivision.

54 (g) The interest and penalties imposed by this section shall be paid
55 and disposed of in the same manner as other revenues from this chapter.

1 Unpaid interest and penalties may be enforced in the same manner as the
2 tax imposed by this chapter.

3 (h) (1) Authority to set interest rates. The commissioner of finance
4 shall set the rate of interest to be paid pursuant to subdivisions (a)
5 and (b) of this section, but if no such rate of interest is set, such
6 rate shall be deemed to be set at seven and one-half percent per annum.
7 Such rate shall be the same for each subdivision and shall be the rate
8 prescribed in paragraph two of this subdivision but shall not be less
9 than seven and one-half percent per annum. Any such rate set by the
10 commissioner of finance shall apply to taxes, or any portion thereof,
11 which remain or become due on or after the date on which such rate
12 becomes effective and shall apply only with respect to interest computed
13 or computable for periods or portions of periods occurring in the period
14 in which such rate is in effect.

15 (2) General rule. The rate of interest set under this subdivision
16 shall be the sum of (i) the federal short-term rate as provided under
17 paragraph three of this subdivision, plus (ii) seven percentage points.

18 (3) Federal short-term rate. For purposes of this subdivision:

19 (A) The federal short-term rate for any month shall be the federal
20 short-term rate determined by the United States secretary of the treas-
21 ury during such month in accordance with subsection (d) of section
22 twelve hundred seventy-four of the internal revenue code for use in
23 connection with section six thousand six hundred twenty-one of the
24 internal revenue code. Any such rate shall be rounded to the nearest
25 full percent, or, if a multiple of one-half of one percent, such rate
26 shall be increased to the next highest full percent.

27 (B) Period during which rate applies.

28 (i) In general. Except as provided in clause (ii) of this subpara-
29 graph, the federal short-term rate for the first month in each calendar
30 quarter shall apply during the first calendar quarter beginning after
31 such month.

32 (ii) Special rule for the month of September, nineteen hundred eight-
33 y-nine. The federal short-term rate for the month of April, nineteen
34 hundred eighty-nine shall apply with respect to setting the rate of
35 interest for the month of September, nineteen hundred eighty-nine.

36 (4) Publication of interest rate. The commissioner of finance shall
37 cause to be published in the City Record, and give other appropriate
38 general notice of, the interest rate to be set under this subdivision no
39 later than twenty days preceding the first day of the calendar quarter
40 during which such interest rate applies. The setting and publication of
41 such interest rate shall not be included within paragraph (a) of subdi-
42 vision five of section one thousand forty-one of the city charter of the
43 preceding municipality as it existed January first, nineteen hundred
44 ninety-four relating to the definition of a rule.

45 (i) Miscellaneous. (1) The certificate of the commissioner of finance
46 to the effect that a tax has not been paid, that a return has not been
47 filed, or that information has not been supplied pursuant to the
48 provisions of this chapter shall be prima facie evidence thereof.

49 (2) Cross-reference: For criminal penalties, see chapter forty of
50 this title.

51 (j) Substantial understatement of liability. If there is a substan-
52 tial understatement of tax for any tax year, there shall be added to the
53 tax an amount equal to ten percent of the amount of any underpayment
54 attributable to such understatement. For purposes of this subdivision,
55 there is a substantial understatement of tax for any tax year if the
56 amount of the understatement for the tax year exceeds the greater of ten

1 percent of the tax required to be shown on the final return for the tax
2 year or five thousand dollars. For purposes of this subdivision, the
3 term "understatement" means the excess of the amount of the tax required
4 to be shown on the final return for the tax year, over the amount of the
5 tax imposed which is shown on the return, reduced by any rebate. The
6 amount of such understatement shall be reduced by that portion of the
7 understatement which is attributable to the tax treatment of any item by
8 the taxpayer if there is or was substantial authority for such treat-
9 ment, or any item with respect to which the relevant facts affecting the
10 item's tax treatment are adequately disclosed in the return or in a
11 statement attached to the return. The commissioner of finance may waive
12 all or any part of the addition to tax provided by this subdivision on a
13 showing by the taxpayer that there was reasonable cause for the under-
14 statement, or part thereof, and that the taxpayer acted in good faith.

15 (k) Aiding or assisting in the giving of fraudulent returns, reports,
16 statements or other documents. (1) Any person who, with the intent that
17 tax be evaded, shall, for a fee or other compensation or as an incident
18 to the performance of other services for which such person receives
19 compensation, aid or assist in, or procure, counsel, or advise the prep-
20 aration or presentation under, or in connection with any matter arising
21 under this chapter of any return, report, statement or other document
22 which is fraudulent or false as to any material matter, or supply any
23 false or fraudulent information, whether or not such falsity or fraud is
24 with the knowledge or consent of the person authorized or required to
25 present such return, report, statement or other document shall pay a
26 penalty not exceeding ten thousand dollars.

27 (2) For purposes of paragraph one of this subdivision, the term
28 "procures" includes ordering, or otherwise causing, a subordinate to do
29 an act, and knowing of, and not attempting to prevent, participation by
30 a subordinate in an act. The term "subordinate" means any other person,
31 whether or not a director, officer, employee, or agent of the taxpayer
32 involved, over whose activities the person has direction, supervision,
33 or control.

34 (3) For purposes of paragraph one of this subdivision, a person
35 furnishing typing, reproducing, or other mechanical assistance with
36 respect to a document shall not be treated as having aided or assisted
37 in the preparation of such document by reason of such assistance.

38 (4) The penalty imposed by this subdivision shall be in addition to
39 any other penalty provided by law.

40 § 11-716 Returns to be secret. a. Except in accordance with proper
41 judicial order or as otherwise provided by law, it shall be unlawful for
42 the commissioner of finance, the department of finance of the city, any
43 officer or employee of the department of finance of the city, any person
44 engaged or retained by such department on an independent contract basis,
45 the tax appeals tribunal, any commissioner or employee of such tribunal,
46 or any person who, pursuant to this section, is permitted to inspect any
47 return or to whom a copy, an abstract or a portion of any return is
48 furnished, or to whom any information contained in any return is
49 furnished, to divulge or make known in any manner any information relat-
50 ing to the business of a taxpayer contained in any return required under
51 this chapter. The officers charged with the custody of such returns
52 shall not be required to produce any of them or evidence of anything
53 contained in them in any action or proceeding in any court, except on
54 behalf of the commissioner of finance in an action or proceeding under
55 the provisions of this chapter, or on behalf of any party to any action
56 or proceeding under the provisions of this chapter when the returns or

1 facts shown thereby are directly involved in such action or proceeding,
2 in either of which events the courts may require the production of, and
3 may admit in evidence so much of said returns or of the facts shown
4 thereby, as are pertinent to the action or proceeding and no more.
5 Nothing in this subdivision shall be construed to prohibit the delivery
6 to a taxpayer or the taxpayer's duly authorized representative of a
7 certified copy of any return filed in connection with his or her tax;
8 nor to prohibit the delivery of such a certified copy of such return or
9 of any information contained in or relating thereto, to the United
10 States of America or any department thereof, the state of New York or
11 any department thereof, any agency or any department of the city of
12 Staten Island provided the same is requested for official business; nor
13 to prohibit the inspection for official business of such returns by the
14 corporation counsel or other legal representatives of the city or by the
15 district attorney of the county of Richmond; nor to prohibit the publi-
16 cation of statistics so classified as to prevent the identification of
17 particular returns or items thereof.

18 b. (1) Any officer or employee of the city who willfully violates the
19 provisions of subdivision a of this section shall be dismissed from
20 office and be incapable of holding any public office in this city for a
21 period of five years thereafter.

22 (2) Cross-reference: For criminal penalties, see chapter forty of this
23 title.

24 c. This section shall be deemed a state statute for purposes of para-
25 graph (a) of subdivision two of section eighty-seven of the public offi-
26 cers law.

27 d. Notwithstanding anything in subdivision a of this section to the
28 contrary, if a taxpayer has petitioned the tax appeals tribunal for
29 administrative review as provided in section one hundred seventy of the
30 charter of the preceding municipality as it existed January first, nine-
31 teen hundred ninety-four, the commissioner of finance shall be author-
32 ized to present to the tribunal any report or return of such taxpayer,
33 or any information contained therein or relating thereto, which may be
34 material or relevant to the proceeding before the tribunal. The tax
35 appeals tribunal shall be authorized to publish a copy or a summary of
36 any decision rendered pursuant to section one hundred seventy-one of the
37 charter of the preceding municipality as it existed January first, nine-
38 teen hundred ninety-four.

39 § 11-717 Notices and limitation of time. a. Any notice authorized or
40 required under the provisions of this chapter may be given to the person
41 for whom it is intended by mailing it in a postpaid envelope addressed
42 to such person at the address given in the last return filed by such
43 person pursuant to the provisions of this chapter or in any application
44 made by such person or if no return has been filed or application made,
45 then to such address as may be obtainable. The mailing of a notice as in
46 this paragraph provided for shall be presumptive evidence of the receipt
47 of the same by the person to whom addressed. Any period of time which is
48 determined according to the provisions of this chapter by the giving of
49 notice shall commence to run from the date of mailing of such notice as
50 in this subdivision provided.

51 b. The provisions of the civil practice law and rules or any other law
52 relative to limitations of time for the enforcement of a civil remedy
53 shall not apply to any proceeding or action taken by the city to levy,
54 appraise, assess, determine or enforce the collection of any tax or
55 penalty provided by this chapter. However, except in the case of a
56 wilfully false or fraudulent return with intent to evade the tax, no

1 assessment of additional tax shall be made after the expiration of more
2 than three years from the date of the final return for the tax year to
3 which the assessment relates; provided, however, that where no return
4 has been made as provided by law, the tax may be assessed at any time.

5 c. Where before the expiration of the period prescribed herein for the
6 assessment of an additional tax, a person has consented in writing that
7 such period be extended, the amount of such additional tax due may be
8 determined at any time within such extended period. The period so
9 extended may be further extended by subsequent consents in writing made
10 before the expiration of the extended period.

11 d. If any return, claim, statement, notice, application, or other
12 document required to be filed, or any payment required to be made, with-
13 in a prescribed period or on or before a prescribed date under authority
14 of any provision of this chapter is, after such period or such date,
15 delivered by United States mail to the commissioner of finance, the tax
16 appeals tribunal, bureau, office, officer or person with which or with
17 whom such document is required to be filed, or to which or to whom such
18 payment is required to be made, the date of the United States postmark
19 stamped on the envelope shall be deemed to be the date of delivery. This
20 subdivision shall apply only if the postmark date falls within the
21 prescribed period or on or before the prescribed date for the filing of
22 such document, or for making the payment, including any extension grant-
23 ed for such filing or payment, and only if such document or payment was
24 deposited in the mail, postage prepaid, properly addressed to the
25 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
26 cer or person with which or with whom the document is required to be
27 filed or to which or to whom such payment is required to be made. If any
28 document is sent by United States registered mail, such registration
29 shall be prima facie evidence that such document was delivered to the
30 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
31 cer or person to which or to whom addressed, and the date of registra-
32 tion shall be deemed the postmark date. The commissioner of finance or,
33 where relevant, the tax appeals tribunal is authorized to provide by
34 regulation the extent to which the provisions of this subdivision with
35 respect to prima facie evidence of delivery and the postmark date shall
36 apply to certified mail. Except as provided in subdivision f of this
37 section, this subdivision shall apply in the case of postmarks not made
38 by the United States postal service only if and to the extent provided
39 by regulation of the commissioner of finance or, where relevant, the tax
40 appeals tribunal.

41 e. When the last day prescribed under authority of this chapter,
42 including any extension of time, for performing any act falls on a
43 Saturday, Sunday or legal holiday in the state, the performance of such
44 act shall be considered timely if it is performed on the next succeeding
45 day which is not a Saturday, Sunday or legal holiday.

46 f. (1) Any reference in subdivision d of this section to the United
47 States mail shall be treated as including a reference to any delivery
48 service designated by the secretary of the treasury of the United States
49 pursuant to section seventy-five hundred two of the internal revenue
50 code and any reference in subdivision d of this section to a United
51 States postmark shall be treated as including a reference to any date
52 recorded or marked in the manner described in section seventy-five
53 hundred two of the internal revenue code by a designated delivery
54 service. If the commissioner of finance finds that any delivery service
55 designated by such secretary is inadequate for the needs of the city,
56 the commissioner of finance may withdraw such designation for purposes

1 of this title. The commissioner of finance may also designate additional
2 delivery services meeting the criteria of section seventy-five hundred
3 two of the internal revenue code for purposes of this title, or may
4 withdraw any such designation if the commissioner of finance finds that
5 a delivery service so designated is inadequate for the needs of the
6 city. Any reference in subdivision d of this section to the United
7 States mail shall be treated as including a reference to any delivery
8 service designated by the commissioner of finance and any reference in
9 subdivision d of this section to a United States postmark shall be
10 treated as including a reference to any date recorded or marked in the
11 manner described in section seventy-five hundred two of the internal
12 revenue code by a delivery service designated by the commissioner of
13 finance. Notwithstanding the foregoing, any withdrawal of designation or
14 additional designation by the commissioner of finance shall not be
15 effective for purposes of service upon the tax appeals tribunal, unless
16 and until such withdrawal of designation or additional designation is
17 ratified by the president of the tax appeals tribunal.

18 (2) Any equivalent of registered or certified mail designated by the
19 United States secretary of the treasury, or as may be designated by the
20 commissioner of finance pursuant to the same criteria used by such
21 secretary for such designations pursuant to section seventy-five hundred
22 two of the internal revenue code, shall be included within the meaning
23 of registered or certified mail as used in subdivision d of this
24 section. If the commissioner of finance finds that any equivalent of
25 registered or certified mail designated by such secretary or the commis-
26 sioner of finance is inadequate for the needs of the city, the commis-
27 sioner of finance may withdraw such designation for purposes of this
28 title. Notwithstanding the provisions of this paragraph, any withdrawal
29 of designation or additional designation by the commissioner of finance
30 shall not be effective for purposes of service upon the tax appeals
31 tribunal, unless and until such withdrawal of designation or additional
32 designation is ratified by the president of the tax appeals tribunal.

33 § 11-718 Construction and enforcement. This chapter shall be construed
34 in conformity with chapter two hundred fifty-seven of the laws of nine-
35 teen hundred sixty-three, pursuant to which it is enacted.

36 § 11-719 Annual report. a. No later than September first, two thousand
37 twenty-five, and every September first thereafter, the department of
38 finance shall submit to the mayor and speaker of the council, and make
39 publicly available online, a report on the commercial rent tax. Such
40 report shall include the following information for the prior commercial
41 rent tax period, on the condition that any category that only includes
42 one taxpayer shall not be reported for any tax period:

43 1. the distribution of taxable premises and taxpayers by base rent
44 range, including the number and zip codes of the taxable premises for
45 which the commercial rent tax was collected, the number of taxpayers who
46 paid the tax, the number of taxpayers who paid the tax on more than one
47 property and the total amount of commercial rent tax paid for the set of
48 taxable premises and taxpayers within each range;

49 2. the distribution of taxable premises and taxpayers by industry,
50 including the number and zip codes of the taxable premises for which the
51 commercial rent tax was collected, the number of taxpayers who paid the
52 tax, the number of taxpayers who paid the tax on more than one property
53 and the total amount of commercial rent tax paid for the set of taxable
54 premises and taxpayers within each industry;

55 3. the total amount of tax collected and the average tax liability per
56 premises for each of the prior ten tax years;

- 1 4. the total amount of tax collected and the average tax liability per
- 2 taxpayer for each of the prior ten tax years;
- 3 5. a comparison of the total commercial rent tax collected to the
- 4 average market value of commercial properties in the city of Staten
- 5 Island as determined by the department for each of the prior ten tax
- 6 years;
- 7 6. the number of taxable premises and the number of taxpayers by base
- 8 rent range and industry who received the credit set forth in section
- 9 11-704.4 of this chapter; and
- 10 7. any other information deemed relevant for inclusion by the depart-
- 11 ment.
- 12 b. For purposes of the report required by subdivision a of this
- 13 section, the base rent ranges shall be:
- 14 1. between \$250,000 and \$274,999;
- 15 2. between \$275,000 and \$299,999;
- 16 3. between \$300,000 and \$349,999;
- 17 4. between \$350,000 and \$399,999;
- 18 5. between \$400,000 and \$449,999;
- 19 6. between \$450,000 and \$499,999;
- 20 7. between \$500,000 and \$549,999;
- 21 8. between \$550,000 and \$599,999;
- 22 9. between \$600,000 and \$699,999;
- 23 10. between \$700,000 and \$799,999;
- 24 11. between \$800,000 and \$899,999;
- 25 12. between \$900,000 and \$999,999;
- 26 13. between \$1,000,000 and \$1,999,999;
- 27 14. between \$2,000,000 and \$2,999,999;
- 28 15. between \$3,000,000 and \$3,999,999;
- 29 16. between \$4,000,000 and \$4,999,999;
- 30 17. between \$5,000,000 and \$9,999,999; and
- 31 18. more than \$10,000,000.

32 CHAPTER 8

33 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES

34 FOR TRANSPORTATION OF PASSENGERS

35 § 11-801 Definitions. When used in this chapter, the following terms
36 shall mean or include:

37 1. "Person." An individual, partnership, corporation, joint-stock
38 company, society, association, receiver, lessee, trustee, estate, refer-
39 ee, assignee, or any other person acting in a fiduciary or represen-
40 tative capacity, whether appointed by a court or otherwise, and any
41 combination of individuals.

42 2. "Motor vehicle." Any vehicle operated upon a public highway or
43 public street propelled by any power other than muscular power.

44 3. "Commercial motor vehicle." (a) Each truck, tractor, trailer or
45 semi-trailer, and any other motor vehicle constructed or specially
46 equipped for the transportation of goods, wares and merchandise which is
47 commonly known as an auto truck or light delivery car;

48 (b) Any traction engine, road roller, tractor crane, truck crane,
49 power shovel, road building machine, snow plow, road sweeper, sand
50 spreader, well driller, or well servicing rig; and

51 (c) Any earth moving equipment as defined in the vehicle and traffic
52 law; provided that such motor vehicles are used principally in the city
53 or used principally in connection with a business carried on within the
54 city.

1 4. "Motor vehicle for transportation of passengers." (a) Any motor
2 vehicle licensed as a taxicab or as a coach, or any motor vehicle, not
3 so licensed, which carries passengers for compensation, including limou-
4 sine service, whether the compensation paid by or on behalf of the
5 passenger is based on mileage, trip, time consumed or any other basis;
6 and

7 (b) Any omnibus, except one operated pursuant to a franchise when,
8 under such franchise or under a contract, relating to transportation to
9 or from airports, with the port of New York authority, the holder of the
10 franchise pays to the city or to the port of New York authority a
11 percentage of its gross earnings or gross receipts or one used exclu-
12 sively in interstate commerce; provided such motor vehicles, as defined
13 in paragraph (a) or (b) of this subdivision, are used regularly, even
14 though not principally, in the city; and further provided that this
15 definition shall not be deemed to include any motor vehicle used princi-
16 pally for the transportation of children to and from schools and day
17 camps operated by non-profit agencies as defined in subdivision four of
18 section 11-803 of this chapter, any motor vehicle used exclusively for
19 transportation of persons in connection with funerals or any motor vehi-
20 cle for transportation of passengers where neither the owner of such
21 motor vehicle nor any person or business engaged in transporting passen-
22 gers by motor vehicle for-hire that is affiliated with such owner has a
23 place of business in such city, a telephone number in such city, or
24 solicits business or specifically advertises in such city.

25 5. "Owner." Any person owning a commercial motor vehicle or a motor
26 vehicle for the transportation of passengers and shall include a
27 purchaser under a reserve title contract, conditional sales agreement or
28 vendor's lien agreement. In addition, an owner shall be deemed to
29 include any lessee, licensee or bailee having the exclusive use of a
30 commercial motor vehicle or a vehicle for the transportation of passen-
31 gers, under a lease or otherwise, for a period of thirty days or more.

32 6. "Omnibus." Any motor vehicle for transportation of passengers for
33 hire having a seating capacity of more than seven persons.

34 7. "Use." Any use of a motor vehicle upon the public highways or
35 streets of the city.

36 8. "Maximum gross weight." The weight of the motor vehicle plus the
37 weight of the maximum load to be carried, if any, by such vehicle.

38 9. "Registered owner." The person who registers a motor vehicle as
39 owner thereof pursuant to the registration requirements of the vehicle
40 and traffic law of the state of New York.

41 10. "Registration fee." The full annual fee or charge prescribed in
42 the vehicle and traffic law of the state of New York for the registra-
43 tion of a motor vehicle.

44 11. "City." The city of Staten Island.

45 12. "Comptroller." The comptroller of the city.

46 13. "Commissioner of finance." The commissioner of finance of the
47 city.

48 14. "Tax year." June first of any calendar year through May thirty-
49 first of the following calendar year.

50 15. "Medallion taxicab." A motor vehicle for transportation of passen-
51 gers which is duly licensed as a taxicab by the taxi and limousine
52 commission and permitted to accept hails from passengers in the street.

53 16. "Tax appeals tribunal." The tax appeals tribunal established by
54 section one hundred sixty-eight of the charter of the preceding munici-
55 pality as it existed January first, nineteen hundred ninety-four.

1 17. "Commissioner of motor vehicles." The commissioner of motor vehi-
2 cles of the state of New York.

3 18. "Taxi and limousine commission." The New York city taxi and limou-
4 sine commission.

5 § 11-802 Imposition of tax. a. In addition to any and all other taxes,
6 including the compensating use tax, there is hereby imposed and there
7 shall be paid annually for each tax year beginning June first, nineteen
8 hundred sixty, a tax on the use in the city of motor vehicles to be paid
9 by the owners of such vehicles as follows:

10 1. (A) For tax years ending on or before May thirty-first, nineteen
11 hundred seventy-two, on commercial vehicles, twenty dollars for each
12 such vehicle having a maximum gross weight of five tons or less, and
13 thirty dollars for each such vehicle having a maximum gross weight of
14 more than five tons, provided, however, that for each such vehicle
15 having a registration fee prescribed in the vehicle and traffic law of
16 the state of New York which is less than twenty dollars, the tax shall
17 be an amount equal to such registration fee;

18 (B) For tax years beginning on and after June first, nineteen hundred
19 seventy-two but before June first, nineteen hundred ninety, on commer-
20 cial vehicles, forty dollars for each such vehicle having a maximum
21 gross weight of five tons or less, and sixty dollars for each such vehi-
22 cle having a maximum gross weight of more than five tons, provided,
23 however, that for each such vehicle having a registration fee prescribed
24 in the vehicle and traffic law of the state of New York which is less
25 than forty dollars, the tax shall be an amount equal to such registra-
26 tion fee.

27 (C) For tax years beginning on and after June first, nineteen hundred
28 ninety, on commercial vehicles, forty dollars for each such vehicle
29 having a maximum gross weight of ten thousand pounds or less, two
30 hundred dollars for each such vehicle having a maximum gross weight of
31 more than ten thousand pounds but not more than twelve thousand five
32 hundred pounds, two hundred seventy-five dollars for each such vehicle
33 having a maximum gross weight of more than twelve thousand five hundred
34 pounds but not more than fifteen thousand pounds and three hundred
35 dollars for each such vehicle having a maximum gross weight of more than
36 fifteen thousand pounds, provided, however, that for each such vehicle
37 having a registration fee prescribed in the vehicle and traffic law of
38 the state of New York which is less than forty dollars, the tax shall be
39 an amount equal to such registration fee.

40 2. (A) For tax years ending on or before May thirty-first, nineteen
41 hundred ninety, on motor vehicles for the transportation of passengers
42 other than medallion taxicabs, and for tax years ending on or before May
43 thirty-first, nineteen hundred eighty-nine, on medallion taxicabs, one
44 hundred dollars for each such vehicle.

45 (B) For the tax year beginning June first, nineteen hundred eighty-
46 nine and ending May thirty-first, nineteen hundred ninety, on medallion
47 taxicabs, five hundred dollars for each such vehicle.

48 (C) For tax years beginning on and after June first, nineteen hundred
49 ninety but before May thirty-first, two thousand nineteen, on medallion
50 taxicabs, one thousand dollars for each such vehicle, and on all other
51 motor vehicles for transportation of passengers, four hundred dollars
52 for each such vehicle.

53 (D) For tax years beginning on or after June first, two thousand nine-
54 teen, on all motor vehicles for transportation of passengers, including
55 medallion taxicabs, four hundred dollars for each such vehicle.

1 b. To the extent that the tax as imposed by subdivision a of this
2 section may be invalid solely because it is based on the use in the city
3 of the motor vehicles, the tax shall also be deemed to be based on the
4 privilege of using the public highways or streets of the city by such
5 motor vehicle. Under such circumstances the rate of tax shall be the
6 same and all other provisions of this chapter shall be equally applica-
7 ble.

8 c. If the first use of any motor vehicle subject to the tax imposed
9 under this chapter occurs on or after December first and before March
10 first in any tax year, the tax for that year shall be one-half of the
11 tax hereinabove provided; and, if the first such use occurs on or after
12 March first in any tax year, the tax for that tax year shall be one-
13 fourth of such tax.

14 d. In applying the tax on commercial motor vehicles with respect to
15 tractors, trailers and semi-trailers, the tax shall be measured by the
16 weight of the tractor plus the maximum gross weight of the trailer or
17 semi-trailer with the greatest such maximum gross weight to be drawn by
18 such tractor. No trailer or semi-trailer shall be subject to any sepa-
19 rate or additional tax under this chapter.

20 § 11-803 Exemptions. The provisions of this chapter shall not apply
21 to motor vehicles owned and operated, or leased for their exclusive use
22 by:

23 1. The state of New York, or any public corporation, including a
24 corporation created pursuant to agreement or compact with another state
25 or the Dominion of Canada, improvement district or other political
26 subdivision of the state;

27 2. The United States of America;

28 3. The United Nations or other world-wide international organizations
29 of which the United States of America is a member;

30 4. Any corporation, or association, or trust, or community chest, fund
31 or foundation, organized and operated exclusively for religious, chari-
32 table or educational purposes, or for the prevention of cruelty to chil-
33 dren or animals, and no part of the net earnings of which inures to the
34 benefit of any private shareholder or individual and no substantial part
35 of the activities of which is carrying on propaganda, or otherwise
36 attempting to influence legislation; provided, however, that nothing in
37 this subdivision shall include an organization operated for the primary
38 purpose of carrying on a trade or business for profit, whether or not
39 all of its profits are payable to one or more organizations described in
40 this subdivision;

41 5. Any foreign nation or representative of a foreign nation with
42 respect to motor vehicles for which they need not pay a registration fee
43 under the provisions of the vehicle and traffic law;

44 6. Dealers in new and used motor vehicles where the use of the motor
45 vehicle is confined solely to demonstrations to prospective customers or
46 to delivery by or to the dealer and the vehicle bears dealer's license
47 plates.

48 § 11-804 Presumption and burden of proof. For the purpose of the
49 proper administration of this chapter and to prevent evasion of the tax
50 hereby imposed, it shall be presumed that all motor vehicles used in the
51 city of the types described in paragraphs (a), (b) and (c) of subdivi-
52 sion three of section 11-801 of this chapter are used principally in the
53 city or used principally in connection with a business carried on within
54 the city and are subject to the tax until the contrary is established;
55 and it shall be presumed that all motor vehicles used in the city of the
56 types described in paragraphs (a) and (b) of subdivision four of section

1 11-801 of this chapter are used regularly, even though not principally
2 in the city and are subject to the tax until the contrary is estab-
3 lished. The burden of proving that a motor vehicle is not taxable under
4 this chapter shall be on the owner of the motor vehicle.

5 § 11-805 Records to be kept. Every owner of a motor vehicle subject
6 to tax under this chapter shall keep such records of his or her vehicles
7 and of their use in the city in such form as the commissioner of finance
8 may by regulation require. Such records shall be offered for inspection
9 and examination at any time upon demand by the commissioner of finance
10 or the commissioner's duly authorized agent or employee and shall be
11 preserved for a period of three years except that the commissioner of
12 finance may consent to their destruction within that period or may
13 require that they be kept longer.

14 § 11-806 Registration. a. By July thirteenth, nineteen hundred sixty
15 or, upon acquiring any motor vehicle subject to tax hereunder after such
16 date, within two days of such acquisition, every owner shall file with
17 the commissioner of finance a certificate of registration in such form
18 as prescribed by the commissioner of finance.

19 b. In order to determine whether motor vehicles are subject to the tax
20 under this chapter and to facilitate administration thereof an informa-
21 tion registration certificate in such form as is prescribed by the
22 commissioner of finance shall be filed with the commissioner of finance
23 by any person who owns or acquires:

24 1. A motor vehicle of a type described in paragraph (a), (b) or (c) of
25 subdivision three of section 11-801 of this chapter which is registered
26 in the city under the vehicle and traffic law or is used in the city in
27 connection with a business carried on within the city; or

28 2. A motor vehicle of the type described in paragraphs (a) and (b) of
29 subdivision four of section 11-801 of this chapter which is registered
30 in the city under the vehicle and traffic law or is used in the city.

31 Such an information registration certificate shall be filed by July
32 thirteenth, nineteen hundred sixty or, if a motor vehicle is acquired
33 after such date, within two days after such acquisition. An information
34 registration certificate, however, need not be filed with respect to any
35 motor vehicle for which a registration certificate has been filed pursu-
36 ant to subdivision a of this section. The commissioner of finance may,
37 by regulation, provide that information registration certificates need
38 not be filed with respect to a type of motor vehicle or with respect to
39 any general group within a type of motor vehicle.

40 § 11-807 Returns. a. On or before the twentieth day of June in each
41 year commencing with the year nineteen hundred sixty, every owner of a
42 motor vehicle subject to tax under this chapter shall file a return with
43 the commissioner of finance. A supplemental return shall also be filed
44 by every owner with regard to each motor vehicle subject to tax acquired
45 during any tax year at a time subsequent to the filing of the owner's
46 regular return. Such supplemental return shall be filed with the
47 commissioner of finance within a stated time, as fixed by regulation of
48 the commissioner of finance, after the acquisition of the motor vehicle.
49 An owner who acquires a motor vehicle subject to the tax after the
50 commencement of a tax year and who has not filed a return or supple-
51 mental return with respect to such motor vehicle shall file a return
52 with respect to it within two days after its acquisition by the owner.

53 b. The commissioner of finance, by regulation, may require that each
54 person required under this chapter to file an information registration
55 certificate file an information return with the commissioner of finance
56 annually or at such other times as the commissioner deems appropriate

1 for proper administration of this chapter. The commissioner of finance
2 may, by regulation, provide that information returns need not be filed
3 or that they be filed at different times with respect to a type of motor
4 vehicle or with respect to any general group within a type of motor
5 vehicle or with respect to any particular circumstances.

6 c. The commissioner of finance may permit or require returns, supple-
7 mental returns or information returns to be filed at times other than
8 those specified in the commissioner's regulations. If the commissioner
9 deems it necessary in order to insure payment of the tax imposed by this
10 chapter, the commissioner of finance may require any return, supple-
11 mental return or information return to be filed with him or her at a
12 time other than that fixed by such commissioner.

13 d. The form of returns, supplemental returns and information returns
14 shall be prescribed by the commissioner of finance and shall contain
15 such information as the commissioner may deem necessary for the proper
16 administration of this chapter. The commissioner of finance may require
17 amended returns, amended supplemental returns or amended information
18 returns to be filed within twenty days after notice and to contain the
19 information specified in the notice.

20 e. If a return, supplemental return or information return is not
21 filed, or if a return of any kind when filed is incorrect or insuffi-
22 cient on its face, the commissioner of finance shall take the necessary
23 steps to enforce the filing of such a return or of a corrected return.

24 § 11-808 Payment of tax. a. At the time of filing a return or supple-
25 mental return the owner shall pay to the commissioner of finance the tax
26 imposed by this chapter. Such tax shall be due and payable on the last
27 day on which such return or supplemental return is required to be filed,
28 regardless of whether such a return is filed or whether the return which
29 is filed correctly indicates the amount of tax due.

30 b. Where an owner of a motor vehicle subject to tax under this chapter
31 replaces it with another motor vehicle during a tax year, the owner
32 shall be entitled, upon approval by the commissioner of finance, to have
33 any tax paid with respect to the replaced vehicle credited toward the
34 tax payable with respect to the replacement vehicle for the balance of
35 such tax year, and the owner shall pay no additional tax for such tax
36 year with respect to it unless its nature or its maximum gross weight
37 requires the payment of a higher amount of tax than that paid with
38 respect to the replaced vehicle. A supplemental return, where required,
39 shall be filed with respect to a replacement vehicle irrespective of
40 whether additional tax is payable. Upon the grant of a waiver of tax by
41 the commissioner of finance a purchaser of a motor vehicle subject to
42 tax under this chapter who purchases it during a tax year from an owner
43 who has paid the tax shall not be required to pay the tax with respect
44 to such motor vehicle for the balance of such tax year if, and only if,
45 the owner obtains, and submits to the commissioner of finance together
46 with his or her return or supplemental return, a certificate or its
47 equivalent, as prescribed by the commissioner of finance, signed by the
48 prior owner to the effect that the prior owner has not had the tax paid
49 credited toward any replacement vehicle and will not seek to obtain such
50 a credit for any replacement vehicle purchased in the future. Nothing
51 contained in this subdivision shall be deemed to authorize a refund
52 merely because a motor vehicle with respect to which the tax has been
53 paid is sold or otherwise disposed of during the course of the tax year.

54 c. Notwithstanding any other provision of law to the contrary, the tax
55 imposed on medallion taxicabs pursuant to subparagraph (C) of paragraph
56 two of subdivision a of section 11-802 of this chapter shall be due and

1 payable in two equal installments, the first of which shall be due and
2 payable on or before the last day on which the return or supplemental
3 return for the tax year is required to be filed, and the second of which
4 shall be due and payable on or before the first day of December in such
5 tax year; provided, however, that if a medallion taxicab is acquired
6 subsequent to the first day of November in such tax year, the full
7 amount of the tax imposed for the tax year shall be due and payable on
8 or before the last day on which the supplemental return with respect to
9 such medallion taxicab is required to be filed.

10 d. Notwithstanding any other provision of law to the contrary, the tax
11 imposed on medallion taxicabs pursuant to subparagraph (B) of paragraph
12 two of subdivision a of section 11-802 of this chapter shall, to the
13 extent not previously paid, be due and payable on or before December
14 first, nineteen hundred eighty-nine; provided, however, that if the tax
15 imposed on a medallion taxicab would, but for the provisions of this
16 subdivision, be due and payable subsequent to December first, nineteen
17 hundred eighty-nine, the due date of such tax shall be determined with-
18 out regard to this subdivision; and provided, further, that nothing in
19 this subdivision shall be deemed to extend the date for payment of any
20 tax imposed by paragraph two of subdivision a of section 11-802 of this
21 chapter.

22 e. Notwithstanding any provision of this chapter or of chapter five of
23 title nineteen of the code of the preceding municipality to the contra-
24 ry, the taxi and limousine commission may require by rule the payment of
25 the tax imposed on medallion taxicabs pursuant to this chapter as a
26 condition precedent of the licensing or license renewal of such medal-
27 lion taxicabs, and the taxi and limousine commission shall have the
28 authority to deny the license or the renewal thereof for any medallion
29 taxicab that fails to pay such tax.

30 § 11-809 Stamps and other indicia of payment. a. The commissioner of
31 finance may, by regulation, provide that the payment of the tax imposed
32 by this chapter shall be evidenced by suitable stamps or other indicia
33 of payment in a form prescribed by the commissioner of finance and that
34 every owner shall affix such stamps or other indicia of payment in the
35 manner prescribed by regulation to each motor vehicle for which a tax
36 had been paid, or shall otherwise keep the indicia of payment with the
37 vehicle, readily available for inspection, in the manner prescribed by
38 regulation. The owner or driver of the vehicle, upon demand, shall
39 exhibit the indicia of payment to the commissioner of finance or the
40 commissioner's duly authorized agent or employee or to any police offi-
41 cer of this city or state. The commissioner of finance may, by regu-
42 lation, make similar provision for the use of stamps or other indicia
43 that no tax is payable with respect to particular motor vehicles.

44 b. An owner who sells a motor vehicle shall not transfer any stamp or
45 other indicia of payment to the purchaser except on a sale to a purchas-
46 er to whom the owner has properly given the certificate provided for in
47 section 11-808 of this chapter with regard to not obtaining a credit
48 toward any tax payable with respect to a replacement vehicle. The
49 commissioner of finance shall, by regulation, provide for the
50 destruction of the stamp or other indicia of payment or its return to
51 the commissioner of finance upon all sales except where transfer to the
52 purchaser is permitted and, where the motor vehicle sold has been
53 replaced, for the issuance of replacement stamps or indicia of payment.

54 § 11-809.1 Collection of tax by commissioner of motor vehicles. a.
55 Notwithstanding any provision of this chapter to the contrary, the tax
56 imposed by this chapter on any commercial motor vehicle with a maximum

1 gross weight of ten thousand pounds or less and on any motor vehicle for
2 transportation of passengers, other than a medallion taxicab, shall be
3 collected by the commissioner of motor vehicles, provided that any such
4 motor vehicle is registered or required to be registered pursuant to any
5 provision of section four hundred one of the vehicle and traffic law.

6 The owner of each such motor vehicle shall pay the tax due thereon to
7 the commissioner of motor vehicles on or before the date upon which such
8 owner registers or renews the registration of such motor vehicle or is
9 required to register or renew the registration thereof pursuant to
10 section four hundred one of the vehicle and traffic law.

11 b. Notwithstanding any provision of section four hundred of the vehi-
12 cle and traffic law to the contrary, payment of the tax with respect to
13 a motor vehicle described in subdivision a of this section shall be a
14 condition precedent to the registration or renewal thereof of such motor
15 vehicle and to the issuance of any certificate of registration and
16 plates or removable date tag in accordance with the vehicle and traffic
17 law and the rules and regulations promulgated thereunder, and no such
18 certificate of registration, plates or tag shall be issued unless such
19 tax has been paid. If the registration period applicable to any such
20 vehicle is a period of not less than two years, as a result of the
21 application of the provisions of paragraph c of subdivision five of
22 section four hundred one of the vehicle and traffic law, the tax
23 required to be paid pursuant to this section shall be the annual tax
24 specified in section 11-802 of this chapter multiplied by the number of
25 years in the registration period. The commissioner of motor vehicles,
26 upon payment of the tax pursuant to this section or upon the application
27 of any person exempt therefrom, shall furnish to each taxpayer paying
28 the tax a receipt for such tax and to each other taxpayer or exempt
29 person a statement, document or other form prescribed by the commis-
30 sioner of motor vehicles, showing that such tax has been paid or is not due
31 with respect to such motor vehicle.

32 c. Notwithstanding the definition of the term "tax year" contained in
33 subdivision fourteen of section 11-801 of this chapter, for purposes of
34 the taxes payable to the commissioner of motor vehicles pursuant to this
35 section, "tax year" shall mean the twelve-month registration period
36 applicable to the subject motor vehicle under the vehicle and traffic
37 law and, in the case of a registration period of at least two years,
38 shall mean each succeeding twelve-month period falling within such
39 registration period.

40 d. Where the tax imposed by this chapter has been paid to the commis-
41 sioner of finance with respect to a motor vehicle for a tax year
42 described in subdivision fourteen of section 11-801 of this chapter, and
43 subsequent thereto but within such tax year the same taxpayer pays a tax
44 to the commissioner of the motor vehicles with respect to such motor
45 vehicle pursuant to this section, such taxpayer shall be entitled to a
46 refund or credit from the commissioner of finance for the portion of the
47 tax paid to the commissioner of finance which is attributable to the
48 period beginning on the first day of the first tax year, as the term
49 "tax year" is defined in subdivision c of this section, for which the
50 tax is paid to the commissioner of motor vehicles and ending on the
51 following May thirty-first, provided, however, that no such refund or
52 credit shall be allowed if the amount thereof is less than five dollars.

53 Any refund or credit to which a taxpayer is entitled pursuant to this
54 subdivision shall be promptly refunded or credited, without interest, by
55 the commissioner of finance, and the commissioner of finance may promul-
56 gate such rules as he or she deems necessary to carry out the provisions

1 of this subdivision. Any amount for which the taxpayer is entitled to a
2 refund or credit pursuant to this subdivision may be allowed as a credit
3 against the tax payable to the commissioner of motor vehicles pursuant
4 to this section to the extent and in the manner provided for in the
5 agreement authorized by subdivision k of this section.

6 e. Whenever any fee or portion of a fee paid for the registration of a
7 motor vehicle under the provisions of the vehicle and traffic law is
8 refunded pursuant to the provisions of subdivision one or one-a of
9 section four hundred twenty-eight thereof, the amount of any tax paid to
10 the commissioner of motor vehicles pursuant to this section upon such
11 registration shall also be refunded by the commissioner of motor vehi-
12 cles, provided that where a fee is refunded pursuant to subdivision
13 one-a of such section four hundred twenty-eight, the amount of tax to be
14 refunded shall be limited to the tax paid for a tax year commencing
15 subsequent to the end of the first twelve-month period of such registra-
16 tion.

17 f. Where the annual registration period applicable to a particular
18 class of motor vehicle begins and ends on the same dates for all motor
19 vehicles within such class, the tax payable to the commissioner of motor
20 vehicles pursuant to this section with respect to a motor vehicle within
21 such class which is registered or required to be registered after the
22 commencement of such annual registration period shall be determined for
23 such period as follows:

24 1. If such motor vehicle is registered or required to be registered
25 before the first day of the seventh month of such period, the tax shall
26 be the amount specified in subdivision a of section 11-802 of this chap-
27 ter.

28 2. If such motor vehicle is registered or required to be registered on
29 or after the first day of the seventh month of such period but before
30 the first day of the tenth month of such period, the tax shall be one-
31 half of the amount specified in subdivision a of section 11-802 of this
32 chapter.

33 3. If such motor vehicle is registered or required to be registered on
34 or after the first day of the tenth month of such period, the tax shall
35 be one-fourth of the amount specified in subdivision a of section 11-802
36 of this chapter.

37 g. The provisions of subdivision b of section 11-808 of this chapter
38 shall apply to this section with such modifications or adaptations as
39 are necessary to carry out the purposes of this section and to ensure
40 collection of the appropriate annual tax specified in subdivision a of
41 section 11-802 of this chapter, and with due regard to the respective
42 responsibilities of the commissioner of finance and the commissioner of
43 motor vehicles under this section and to the definitions of "tax year"
44 contained in subdivision c of this section and subdivision fourteen of
45 section 11-801 of this chapter. The agreement between the commissioner
46 of finance and the commissioner of motor vehicles authorized by subdivi-
47 sion k of this section may contain such provisions concerning the divi-
48 sion of responsibility for collection of the taxes imposed by this chap-
49 ter and the granting of refunds or credits as are consistent with this
50 section and subdivision b of section 11-808 of this chapter, and the
51 commissioner of finance and the commissioner of motor vehicles may also
52 adopt such rules as they deem necessary for such purposes.

53 h. Notwithstanding any provision of section 11-807 of this chapter to
54 the contrary, at the time a tax is required to be paid to the commis-
55 sioner of motor vehicles pursuant to this section, the person required
56 to pay such tax shall file a return with the commissioner of motor vehi-

1 cles in such form and containing such information as he or she may
2 prescribe. The taxpayer's application for registration or the renewal
3 thereof shall constitute the return required under this subdivision
4 unless the commissioner of motor vehicles shall otherwise provide by
5 rule. A return filed pursuant to this subdivision with respect to a
6 motor vehicle for a tax year or years shall be in lieu of any return
7 otherwise required to be filed with respect thereto pursuant to section
8 11-807 of this chapter.

9 i. In any case in which the tax imposed by this chapter is required to
10 be paid to the commissioner of motor vehicles but is not so paid, the
11 commissioner of finance shall collect such tax and all of the provisions
12 of this chapter relating to collection of taxes by the commissioner of
13 finance shall apply with respect thereto.

14 j. Notwithstanding any provision of section four hundred of the vehi-
15 cle and traffic law to the contrary, in those cases in which the commis-
16 sioner of finance is responsible for collecting the tax imposed by this
17 chapter, the commissioner of motor vehicles shall not issue a certif-
18 icate of registration, plates or removable date tag for any motor vehi-
19 cle subject to such tax with respect to which the commissioner of
20 finance has notified the commissioner of motor vehicles that such tax
21 has not been paid, unless the registrant submits proof, in a form
22 approved by the commissioner of motor vehicles, that such tax has been
23 paid, or is not due, with respect to such motor vehicle.

24 k. The commissioner of finance is hereby authorized and empowered to
25 enter into an agreement with the commissioner of motor vehicles to
26 govern the collection of the taxes imposed by this chapter which are
27 required to be paid to the commissioner of motor vehicles pursuant to
28 this section. Such agreement shall provide for the exclusive method of
29 collection, custody and remittal to the commissioner of finance of the
30 proceeds of any such tax; for the payment by the city of the reasonable
31 expenses incurred by the department of motor vehicles in connection with
32 the collection of any such tax; for the commissioner of finance, or a
33 duly designated representative, upon his or her request, not more
34 frequently than once in each calendar year at a time agreed upon by the
35 state comptroller, to audit the accuracy of the payments, distributions
36 and remittances to the city; and for such other matters as may be neces-
37 sary and proper to effectuate the purposes of such agreement. Such
38 agreement shall have the force and effect of a rule or regulation of the
39 commissioner of motor vehicles and shall be filed and published in
40 accordance with any statutory requirements relating thereto.

41 l. The commissioner of motor vehicles shall promptly notify the corpo-
42 ration counsel of the city of any litigation instituted against such
43 commissioner which challenges the constitutionality or validity of any
44 provision of this chapter, or of the enabling act pursuant to which it
45 was adopted, or which attempts to limit or question the application of
46 either such law, and such notification shall include copies of the
47 papers served upon such commissioner.

48 m. The commissioner of motor vehicles shall begin to collect taxes in
49 accordance with the provisions of this section at such time as is speci-
50 fied in the agreement between the commissioner of motor vehicles and the
51 commissioner of finance provided for in subdivision k of this section.

52 n. In addition to any other powers granted to the commissioner of
53 motor vehicles in this chapter or any other law, he or she is hereby
54 authorized and empowered: 1. to adopt and amend rules appropriate to
55 the carrying out of his or her responsibilities under this chapter; 2.
56 to request information concerning motor vehicles and persons subject to

1 the provisions of this chapter from the department of motor vehicles of
2 any other state, the treasury department of the United States or the
3 appropriate officials of any city or county of the state of New York;
4 and to afford such information to such department of motor vehicles,
5 treasury department or officials of such city or county, any provision
6 of this chapter to the contrary notwithstanding; 3. to delegate his or
7 her functions under this section to a deputy commissioner in the depart-
8 ment of motor vehicles or any employee of such department or to any
9 county clerk or other officer who acts as the agent of such commissioner
10 in the registration of motor vehicles; 4. to require all persons owning
11 motor vehicles with respect to which the tax imposed by this chapter is
12 payable to the commissioner of motor vehicles to keep such records as he
13 or she may prescribe and to furnish such information upon his or her
14 request; and 5. to extend, for cause shown, the time for filing any
15 return required to be filed with the commissioner of motor vehicles for
16 a period not exceeding sixty days.

17 o. To the extent that any provision of this section is in conflict
18 with any other provision of this chapter, the provisions of this section
19 shall be controlling, but in all other respects such other provisions of
20 this chapter shall remain fully applicable with respect to the imposi-
21 tion, administration and collection of the taxes imposed by this chap-
22 ter.

23 § 11-809.2 Collection of tax by the taxi and limousine commission on
24 behalf of the commissioner of finance. a. Notwithstanding any provision
25 of this chapter to the contrary, the tax imposed by this chapter on any
26 designated licensed vehicle, as defined in this subdivision, shall be
27 collected by the taxi and limousine commission on behalf of the commis-
28 sioner of finance. Except as otherwise provided by subdivision m of this
29 section, the owner of each such designated licensed vehicle shall pay
30 the tax due thereon to the taxi and limousine commission on or before
31 the date upon which such owner licenses or renews the license of such
32 designated licensed vehicle or is required to license or renew the
33 license thereof pursuant to chapter five of title nineteen of the code
34 of the preceding municipality. For purposes of this section, the term
35 "designated licensed vehicle" shall mean a motor vehicle for the trans-
36 portation of passengers, other than a medallion taxicab, the tax on
37 which is not collected by the commissioner of motor vehicles pursuant to
38 section 11-809.1 of this chapter and which is licensed or required to be
39 licensed by the taxi and limousine commission pursuant to any provision
40 of chapter five of title nineteen of the code of the preceding munici-
41 pality.

42 b. Notwithstanding any provision of chapter five of title nineteen of
43 the code of the preceding municipality to the contrary, payment of the
44 tax with respect to a designated licensed vehicle shall be a condition
45 precedent to the licensing or license renewal of such designated
46 licensed vehicle with the taxi and limousine commission, and no such
47 license or renewal thereof shall be issued unless such tax has been
48 paid. Except as provided in subdivisions f and m of this section, if the
49 license period applicable to any such designated licensed vehicle is a
50 period of more than one year, the tax required to be paid pursuant to
51 this section shall be the annual tax specified in section 11-802 of this
52 chapter multiplied by the number of years in the license period. The
53 taxi and limousine commission, upon payment of the tax pursuant to this
54 section or upon the application of any person exempt therefrom, shall
55 furnish to each taxpayer paying the tax a receipt for such tax and to
56 each other taxpayer or exempt person a statement, document or other form

1 prescribed by the taxi and limousine commission, showing that such tax
2 has been paid or is not due with respect to such designated licensed
3 vehicle.

4 c. For purposes of this section, the term "tax period" shall mean the
5 license period applicable to the designated licensed vehicle under chap-
6 ter five of title nineteen of the code of the preceding municipality
7 and, in the case of a license period of other than one year, shall mean
8 the number of twelve-month periods and any period of less than twelve
9 months within such license period. The term "tax period" shall also
10 include any periods described in subparagraph (A) of paragraph one of
11 subdivision m of this section.

12 d. Except as provided in subdivision m of this section, where the tax
13 imposed by this chapter has been paid to the commissioner of finance
14 with respect to a motor vehicle for a tax year described in subdivision
15 fourteen of section 11-801 of this chapter, and subsequent thereto but
16 within such tax year the same taxpayer pays a tax to the taxi and limou-
17 sine commission with respect to such motor vehicle pursuant to this
18 section, such taxpayer shall be entitled to a refund or credit from the
19 commissioner of finance for the portion of the tax paid to the commis-
20 sioner of finance that is attributable to the period beginning on the
21 first day of the first tax period for which the tax is paid to the taxi
22 and limousine commission and ending on the following May thirty-first,
23 provided, however, that no such refund or credit shall be allowed if the
24 amount thereof is less than five dollars. Any refund or credit to which
25 a taxpayer is entitled pursuant to this subdivision shall be promptly
26 refunded or credited, without interest, by the commissioner of finance,
27 and the commissioner of finance may promulgate such rules as he or she
28 deems necessary to carry out the provisions of this subdivision.

29 e. If the license for the designated licensed vehicle is transferred,
30 surrendered or terminated for reasons other than revocation, and the
31 applicable license period under chapter five of title nineteen of the
32 code of the preceding municipality is for more than one year, and the
33 tax paid to the taxi and limousine commission was for a tax period of
34 more than twelve months, except as otherwise provided in the agreement
35 between the taxi and limousine commission and the commissioner of
36 finance authorized pursuant to subdivision k of this section, the
37 commissioner of finance shall refund the tax paid for any twelve-month
38 period commencing subsequent to the transfer, surrender or other termi-
39 nation of the license described in this subdivision.

40 f. Except as provided in subdivision m of this section, for designated
41 licensed vehicles whose license period is a two year period that begins
42 and ends on the same dates, the tax payable to the taxi and limousine
43 commission pursuant to this section with respect to a designated
44 licensed vehicle that is licensed or required to be licensed after the
45 commencement of such license period shall be determined as follows:

46 1. If such designated licensed vehicle is licensed or required to be
47 licensed before the first day of the seventh month of such period, the
48 tax shall be the amount determined pursuant to subdivision b of this
49 section.

50 2. If such designated licensed vehicle is licensed or required to be
51 licensed on or after the first day of the seventh month of such period
52 but before the first day of the thirteenth month of such period, the tax
53 shall be three-fourths of the amount determined pursuant to subdivision
54 b of this section.

55 3. If such designated licensed vehicle is licensed or required to be
56 licensed on or after the first day of the thirteenth month but before

1 the first day of the nineteenth month of such period, the tax shall be
2 one-half of the amount determined pursuant to subdivision b of this
3 section.

4 4. If such designated licensed vehicle is licensed or required to be
5 licensed on or after the first day of the nineteenth month of such peri-
6 od, the tax shall be one-fourth of the amount determined pursuant to
7 subdivision b of this section.

8 5. When the license period described in this section is for a period
9 of less than two years, the commissioner of finance shall have the
10 authority to provide by rule the amount to be payable under this subdi-
11 vision.

12 g. The provisions of subdivision b of section 11-808 of this chapter
13 shall apply to this section with such modifications or adaptations as
14 are necessary to carry out the purposes of this section and to ensure
15 collection of the appropriate annual tax specified in subdivision a of
16 section 11-802 of this chapter, and with due regard to the respective
17 responsibilities of the commissioner of finance and the taxi and limou-
18 sine commission under this section and to the definition of "tax year"
19 contained in subdivision fourteen of section 11-801 of this chapter and
20 to the definition of "tax period" contained in subdivision c of this
21 section. The agreement between the commissioner of finance and the taxi
22 and limousine commission authorized by subdivision k of this section may
23 contain such provisions concerning the division of responsibility for
24 collection of the taxes imposed by this chapter and the granting of
25 refunds or credits as are consistent with this section and subdivision b
26 of section 11-808 of this chapter, and the commissioner of finance and
27 the taxi and limousine commission may also adopt such rules as they deem
28 necessary for such purposes.

29 h. Notwithstanding any provision of section 11-807 of this chapter to
30 the contrary, at the time a tax is required to be paid to the taxi and
31 limousine commission pursuant to this section, the person required to
32 pay such tax shall file a return with the taxi and limousine commission
33 in such form and containing such information as the taxi and limousine
34 commission may prescribe. The taxpayer's application for a license or
35 the renewal thereof shall constitute the return required under this
36 subdivision unless the taxi and limousine commission shall otherwise
37 provide by rule. A return filed pursuant to this subdivision with
38 respect to a designated licensed vehicle for a tax period or periods
39 shall be in lieu of any return otherwise required to be filed with
40 respect thereto pursuant to section 11-807 of this chapter. Unless the
41 taxi and limousine commission otherwise requires, the filing of a return
42 shall not be required for the tax periods described in subparagraph (A)
43 of paragraph one of subdivision m of this section.

44 i. In any case in which the tax imposed by this chapter is required to
45 be paid to the taxi and limousine commission but is not so paid, the
46 commissioner of finance shall collect such tax and all of the provisions
47 of this chapter relating to collection of taxes by the commissioner of
48 finance shall apply with respect thereto.

49 j. Notwithstanding any provision of chapter five of title nineteen of
50 the code of the preceding municipality to the contrary, in those cases
51 in which the commissioner of finance is responsible for collecting the
52 tax imposed by this chapter, the taxi and limousine commission shall not
53 issue or renew a license for any designated licensed vehicle subject to
54 such tax with respect to which the commissioner of finance has notified
55 the taxi and limousine commission that such tax has not been paid,
56 unless the applicant for such license or renewal submits proof, in a

1 form approved by the taxi and limousine commission, that such tax has
2 been paid, or is not due, with respect to such designated licensed vehi-
3 cle.

4 k. The commissioner of finance is hereby authorized and empowered to
5 enter into an agreement with the taxi and limousine commission to govern
6 the collection of the taxes imposed by this chapter which are required
7 to be paid to the taxi and limousine commission pursuant to this
8 section. Such agreement may provide for the exclusive method of
9 collection, custody and remittal to the commissioner of finance of the
10 proceeds of any such tax; for the payment by the commissioner of finance
11 of reasonable expenses incurred by the taxi and limousine commission in
12 connection with the collection of any such tax; for the commissioner of
13 finance, or a duly designated representative, upon his or her request,
14 not more frequently than once in each calendar year at a time agreed
15 upon by the city comptroller, to audit the accuracy of the payments,
16 distributions and remittances to the commissioner of finance; and for
17 such other matters as may be necessary and proper to effectuate the
18 purposes of such agreement.

19 l. The taxi and limousine commission shall promptly notify the corpo-
20 ration counsel of the city and the commissioner of finance of any liti-
21 gation instituted against such commission which challenges the constitu-
22 tionality or validity of any provision of this chapter, or which
23 attempts to limit or question the application of this chapter, and such
24 notification shall include copies of the papers served upon such commis-
25 sion.

26 m. Except as otherwise provided in the agreement between the taxi and
27 limousine commission and the commissioner of finance authorized by
28 subdivision k of this section, or with respect to the periods described
29 in paragraph two of this subdivision, the taxi and limousine commission
30 shall begin to collect taxes in accordance with the provisions of this
31 section on the first day of April in the year two thousand twelve as
32 follows:

33 1. The tax due on a designated licensed vehicle, the license for which
34 expires on or after the first day of June in the year two thousand
35 twelve and before the first day of June in the year two thousand four-
36 teen, shall be determined as follows:

37 (A) For a designated licensed vehicle whose license expires on or
38 after the first day of June in the year two thousand twelve and before
39 the first day of June in the year two thousand fourteen, the amount of
40 tax for the tax period between the first day of June in the year two
41 thousand twelve and the date the license shall expire for such desig-
42 nated licensed vehicle pursuant to chapter five of title nineteen of the
43 code of the preceding municipality shall be the sum of (i) the annual
44 tax specified in subparagraph (C) of paragraph two of subdivision a of
45 section 11-802 of this chapter for any twelve-month period within such
46 tax period, and (ii) the amount determined under subparagraph (B) of
47 this paragraph for any period of less than twelve months within such tax
48 period. The amount of tax so determined shall be payable on or before
49 the first day of June in the year two thousand twelve. In the event the
50 amount of tax due and payable under this subparagraph shall not have
51 been paid within thirty days of the first day of June in the year two
52 thousand twelve, the taxi and limousine commission shall suspend the
53 license for such designated licensed vehicle, and the license for any
54 such designated licensed vehicle which has expired shall not be renewed
55 until such time as such tax is paid.

1 (B) For purposes of subparagraph (A) of this paragraph, the amount of
2 tax for a period of less than twelve months shall be determined as
3 follows: (i) if such period is nine months or more, the amount for such
4 period shall be the full amount of annual tax provided in subparagraph
5 (C) of paragraph two of subdivision a of section 11-802 of this chapter;
6 (ii) if such period is more than six months but less than nine months,
7 the amount for such period shall be three-fourths of the amount of annu-
8 al tax provided in subparagraph (C) of paragraph two of subdivision a of
9 section 11-802 of this chapter; (iii) if such period is more than three
10 months but less than six months, the amount for such period shall be
11 one-half of the amount of annual tax provided in subparagraph (C) of
12 paragraph two of subdivision a of section 11-802 of this chapter; and
13 (iv) if such period is less than three months, the amount for such peri-
14 od shall be one-fourth of the amount of annual tax provided in subpara-
15 graph (C) of paragraph two of subdivision a of section 11-802 of this
16 chapter.

17 2. Upon the date for payment set forth in subparagraph (A) of para-
18 graph one of this subdivision, the taxi and limousine commission shall
19 require the taxpayer to provide a proof of payment of the tax to the
20 commissioner of finance for the period beginning on the first day of
21 June in the year two thousand eleven and ending on the thirty-first day
22 of May in the year two thousand twelve or any part of such period for
23 which the taxpayer was subject to the tax. In the event the taxpayer has
24 not paid such tax to the commissioner of finance: (i) the license for
25 any designated licensed vehicle described in subparagraph (A) of this
26 paragraph shall not be renewed until such time as such tax, together
27 with any applicable interest or penalties, has been paid to the commis-
28 sioner of finance and (ii) if such tax remains unpaid as of the end of
29 the thirty-day period set forth in subparagraph (A) of paragraph one of
30 this subdivision, the license for any designated licensed vehicle
31 described in subparagraph (A) of paragraph one of this subdivision shall
32 be suspended until such time as such tax, together with any applicable
33 interest or penalties, is paid to the commissioner of finance.

34 n. In addition to any other powers granted to the taxi and limousine
35 commission in this chapter or any other law, the taxi and limousine
36 commission is hereby authorized and empowered:

37 1. to adopt and amend rules appropriate to the carrying out of its
38 responsibilities under this chapter;

39 2. to request information concerning motor vehicles and persons
40 subject to the provisions of this chapter from the commissioner of motor
41 vehicles, the department of motor vehicles of any other state, the trea-
42 sury department of the United States or the appropriate officials of any
43 city or county of the state of New York; and to afford such information
44 to such department of motor vehicles, treasury department or officials
45 of such city or county, any provision of this chapter to the contrary
46 notwithstanding;

47 3. to delegate its functions under this section to any commissioner or
48 employee of such commission;

49 4. to require any person who is an owner, as defined in chapter five
50 of title nineteen of the code of the preceding municipality, of a desig-
51 nated licensed vehicle to keep such records as it prescribes and to
52 furnish such information upon its request; and

53 5. to extend, for cause shown, the time for filing any return required
54 to be filed with the taxi and limousine commission for a period not
55 exceeding sixty days.

1 o. To the extent that any provision of this section is in conflict
2 with any other provision of this chapter, the provisions of this section
3 shall be controlling, but in all other respects such other provisions of
4 this chapter shall remain fully applicable with respect to the imposi-
5 tion, administration and collection of the taxes imposed by this chap-
6 ter.

7 § 11-810 Determination of tax. If a return required by this chapter is
8 not filed, or if a return when filed is incorrect or insufficient, the
9 commissioner of finance shall determine the amount of tax due from such
10 information as may be obtainable and, if necessary, may estimate the tax
11 on the basis of external indices such as motor vehicle registration with
12 the department of motor vehicles and/or any other factors. Notice of
13 such determination shall be given to the person liable for the payment
14 of the tax. Such determination shall finally and irrevocably fix the tax
15 unless the person against whom it is assessed, within ninety days after
16 the giving of notice of such determination or, if the commissioner of
17 finance has established a conciliation procedure pursuant to section
18 11-124 of this title and the taxpayer has requested a conciliation
19 conference in accordance therewith, within ninety days from the mailing
20 of a conciliation decision or the date of the commissioner's confirma-
21 tion of the discontinuance of the conciliation proceeding, both (1)
22 serves a petition upon the commissioner of finance and (2) files a peti-
23 tion with the tax appeals tribunal for a hearing, or unless the commis-
24 sioner of finance of his or her own motion shall redetermine the same.
25 Such hearing and any appeal to the tax appeals tribunal sitting en banc
26 from the decision rendered in such hearing shall be conducted in the
27 manner and subject to the requirements prescribed by the tax appeals
28 tribunal pursuant to sections one hundred sixty-eight through one
29 hundred seventy-two of the charter of the preceding municipality as it
30 existed January first, nineteen hundred ninety-four. After such hearing
31 the tax appeals tribunal shall give notice of its decision to the person
32 against whom the tax is assessed and to the commissioner of finance. A
33 decision of the tax appeals tribunal sitting en banc shall be reviewable
34 for error, illegality or unconstitutionality or any other reason whatso-
35 ever by a proceeding under article seventy-eight of the civil practice
36 law and rules if application therefor is made to the supreme court by
37 the person against whom the tax was assessed within four months after
38 the giving of the notice of such tax appeals tribunal decision. A
39 proceeding under article seventy-eight of the civil practice law and
40 rules shall not be instituted by a taxpayer unless: (a) the amount of
41 any tax sought to be reviewed, with penalties and interest thereon, if
42 any, shall be first deposited with the commissioner of finance and there
43 shall be filed with the commissioner of finance an undertaking, issued
44 by a surety company authorized to transact business in this state and
45 approved by the superintendent of insurance of this state as to solvency
46 and responsibility, in such amount and with such sureties as a justice
47 of the supreme court shall approve, to the effect that if such proceed-
48 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
49 and charges which may accrue in the prosecution of the proceeding, or
50 (b) at the option of the taxpayer such undertaking filed with the
51 commissioner of finance may be in a sum sufficient to cover the taxes,
52 penalties and interest thereon stated in such decision plus the costs
53 and charges which may accrue against it in the prosecution of the
54 proceeding, in which event the taxpayer shall not be required to deposit
55 such taxes, penalties and interest as a condition precedent to the
56 application.

1 § 11-811 Refunds. a. In the manner provided in this section the
2 commissioner of finance shall refund or credit, without interest, any
3 tax, penalty or interest erroneously, illegally or unconstitutionally
4 collected or paid, if written application to the commissioner of finance
5 for such refund shall be made within one year from the payment thereof.
6 Whenever a refund or credit is made or denied, the commissioner of
7 finance shall state his or her reason therefor and give notice thereof
8 to the taxpayer in writing. The commissioner of finance may, in lieu of
9 any refund required to be made, allow credit therefor on payments due
10 from the applicant.

11 b. Any determination of the commissioner of finance denying a refund
12 or credit pursuant to subdivision a of this section shall be final and
13 irrevocable unless the applicant for such refund or credit, within nine-
14 ty days from the mailing or notice of such determination, or, if the
15 commissioner of finance has established a conciliation procedure pursu-
16 ant to section 11-124 of this title and the applicant has requested a
17 conciliation conference in accordance therewith, within ninety days from
18 the mailing of a conciliation decision or the date of the commissioner's
19 confirmation of the discontinuance of the conciliation proceeding, both
20 (1) serves a petition upon the commissioner of finance and (2) files a
21 petition with the tax appeals tribunal for a hearing. Such petition for
22 a refund or credit, made as herein provided, shall be deemed an applica-
23 tion for a revision of any tax, penalty or interest complained of. Such
24 hearing and any appeal to the tax appeals tribunal sitting en banc from
25 the decision rendered in such hearing shall be conducted in the manner
26 and subject to the requirements prescribed by the tax appeals tribunal
27 pursuant to sections one hundred sixty-eight through one hundred seven-
28 ty-two of the charter of the preceding municipality as it existed Janu-
29 ary first, nineteen hundred ninety-four. After such hearing, the tax
30 appeals tribunal shall give notice of its decision to the applicant and
31 to the commissioner of finance. The applicant shall be entitled to
32 institute a proceeding pursuant to article seventy-eight of the civil
33 practice law and rules to review a decision of the tax appeals tribunal
34 sitting en banc if application to the supreme court be made therefor
35 within four months after the giving of notice of such decision, and
36 provided, in the case of an application by a taxpayer, that a final
37 determination of tax due was not previously made. Such a proceeding
38 shall not be instituted by a taxpayer, unless an undertaking shall first
39 be filed with the commissioner of finance in such amount and with such
40 sureties as a justice of the supreme court shall approve, to the effect
41 that if such proceeding be dismissed or the tax confirmed, the taxpayer
42 will pay all costs and charges which may accrue in the prosecution of
43 the proceeding.

44 c. A person shall not be entitled to a revision, refund or credit
45 under this section of a tax, interest or penalty which had been deter-
46 mined to be due pursuant to the provisions of section 11-810 of this
47 chapter where such person has had a hearing or an opportunity for a
48 hearing, as provided in said section, or has failed to avail himself or
49 herself of the remedies therein provided. No refund or credit shall be
50 made of a tax, interest or penalty paid after a determination by the
51 commissioner of finance made pursuant to section 11-810 of this chapter
52 unless it be found that such determination was erroneous, illegal or
53 unconstitutional or otherwise improper, by the tax appeals tribunal
54 after a hearing or on the commissioner's own motion, or, if such tax
55 appeals tribunal affirms in whole or in part the determination of the
56 commissioner of finance, in a proceeding under article seventy-eight of

1 the civil practice law and rules, pursuant to the provisions of said
2 section, in which event refund or credit without interest shall be made
3 of the tax, interest or penalty found to have been overpaid.

4 § 11-812 Remedies exclusive. The remedies provided by this chapter
5 shall be the exclusive remedies available to any person for the review
6 of tax liability imposed by this chapter; and no determination or
7 proposed determination of tax or determination on any application for
8 refund by the commissioner of finance, nor any decision by the tax
9 appeals tribunal or any of its administrative law judges, shall be
10 enjoined or reviewed by an action for declaratory judgment, an action
11 for money had and received or by any action or proceeding other than, in
12 the case of a decision by the tax appeals tribunal sitting en banc, a
13 proceeding under article seventy-eight of the civil practice law and
14 rules; provided, however, that a taxpayer may proceed by declaratory
15 judgment if the taxpayer institutes suit within thirty days after a
16 deficiency assessment is made and pays the amount of the deficiency
17 assessment to the commissioner of finance prior to the institution of
18 such suit and posts a bond for costs as provided in section 11-810 of
19 this chapter.

20 § 11-813 Reserves. In cases where the taxpayer has applied for a
21 refund and has instituted a proceeding under article seventy-eight of
22 the civil practice law and rules to review a determination adverse to
23 the taxpayer on his or her application for refund, the comptroller shall
24 set up appropriate reserves to meet any decision adverse to the city.

25 § 11-814 Proceedings to recover tax. a. Whenever any person shall
26 fail to pay any tax or penalty or interest imposed by this chapter as
27 herein provided, the corporation counsel shall, upon the request of the
28 commissioner of finance, bring or cause to be brought an action to
29 enforce payment of the same against the person liable for the same on
30 behalf of the city of Staten Island in any court of the state of New
31 York or of any other state or of the United States. If, however, the
32 commissioner of finance in his or her discretion believes that a taxpay-
33 er subject to the provisions of this chapter is about to cease business,
34 leave the state or remove or dissipate the assets out of which tax or
35 penalties might be satisfied and that any such tax or penalty will not
36 be paid when due, the commissioner may declare such tax or penalty to be
37 immediately due and payable and may issue a warrant immediately.

38 b. As an additional or alternate remedy, the commissioner of finance
39 may issue a warrant, directed to the city sheriff commanding the sheriff
40 to levy upon and sell the real and personal property of such person
41 which may be found within the city, for the payment of the amount there-
42 of, with any penalties and interest, and the cost of executing the
43 warrant, and to return such warrant to the commissioner of finance and
44 to pay to the commissioner the money collected by virtue thereof within
45 sixty days after the receipt of such warrant. The city sheriff shall,
46 within five days after the receipt of the warrant, file with the county
47 clerk a copy thereof, and thereupon such clerk shall enter in the judge-
48 ment docket the name of the person mentioned in the warrant and the
49 amount of the tax, penalties and interest for which the warrant is
50 issued and the date when such copy is filed. Thereupon the amount of
51 such warrant so docketed shall become a lien upon the title to and
52 interest in real and personal property of the person against whom the
53 warrant is issued. The city sheriff shall then proceed upon the warrant
54 in the same manner and with like effect as that provided by law in
55 respect to executions issued against property upon judgments of a court
56 of record, and for services in executing the warrant the sheriff shall

1 be entitled to the same fees which he or she may collect in the same
2 manner. In the discretion of the commissioner of finance a warrant of
3 like terms, force and effect may be issued and directed to any officer
4 or employee of the department of finance, and in the execution thereof
5 such officer or employee shall have all the powers conferred by law upon
6 sheriffs, but such officer or employee shall be entitled to no fee or
7 compensation in excess of the actual expenses paid in the performance of
8 such duty. If a warrant is returned not satisfied in full, the commis-
9 sioner of finance may from time to time issue new warrants and shall
10 also have the same remedies to enforce the amount due thereunder as if
11 the city had recovered judgment therefor and execution thereon had been
12 returned unsatisfied.

13 c. Whenever there is made a sale, transfer or assignment in bulk of
14 any part or the whole of a stock of merchandise or of fixtures, or
15 merchandise and of fixtures pertaining to the conducting of the business
16 of the seller, transferor or assignor, otherwise than in the ordinary
17 course of trade and in the regular prosecution of said business, the
18 purchaser, transferee or assignee shall at least ten days before taking
19 possession of such merchandise, fixtures, or merchandise and fixtures,
20 or paying therefor, notify the commissioner of finance by registered
21 mail of the proposed sale and of the price, terms and conditions thereof
22 whether or not the seller, transferor or assignor, has represented to,
23 or informed the purchaser, transferee or assignee that it owes any tax
24 pursuant to this chapter and whether or not the purchaser, transferee or
25 assignee has knowledge that such taxes are owing, and whether any such
26 taxes are in fact owing.

27 Whenever the purchaser, transferee or assignee shall fail to give
28 notice to the commissioner of finance as required by the opening para-
29 graph of this subdivision, or whenever the commissioner of finance shall
30 inform the purchaser, transferee or assignee that a possible claim for
31 such tax or taxes exists, any sums of money, property or choses in
32 action, or other consideration, which the purchaser, transferee or
33 assignee is required to transfer over to the seller, transferor or
34 assignor shall be subject to a first priority right and lien for any
35 such taxes theretofore or thereafter determined to be due from the sell-
36 er, transferor or assignor to the city, and the purchaser, transferee or
37 assignee is forbidden to transfer to the seller, transferor or assignor
38 any such sums of money, property or choses in action to the extent of
39 the amount of the city's claim. For failure to comply with the
40 provisions of this subdivision, the purchaser, transferee or assignee,
41 in addition to being subject to the liabilities and remedies imposed
42 under the provisions of former section forty-four of the personal prop-
43 erty law, shall be personally liable for the payment to the city of any
44 such taxes theretofore or thereafter determined to be due to the city
45 from the seller, transferor or assignor, and such liability may be
46 assessed and enforced in the same manner as the liability for tax under
47 this chapter.

48 d. The commissioner of finance, if he or she finds that the interests
49 of the city will not thereby be jeopardized, and upon such conditions as
50 the commissioner of finance may require, may release any property from
51 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
52 tions to tax, penalties and interest filed pursuant to subdivision b of
53 this section, and such release or vacating of the warrant may be
54 recorded in the office of any recording officer in which such warrant
55 has been filed. The clerk shall thereupon cancel and discharge as of the
56 original date of docketing the vacated warrant.

1 § 11-815 General powers of the commissioner of finance. In addition
2 to all other powers granted to the commissioner of finance in this chap-
3 ter, the commissioner is hereby authorized and empowered:

4 1. To make, adopt and amend rules and regulations appropriate to the
5 carrying out of this chapter and the purposes thereof;

6 2. To extend, for cause shown, the time for filing any kind of return
7 for a period not exceeding sixty days; and to compromise disputed claims
8 in connection with the taxes hereby imposed;

9 3. To request information concerning motor vehicles and persons
10 subject to the provisions of this chapter from the department of motor
11 vehicles and from the department of taxation and finance of the state of
12 New York or any successor to their duties, or the treasury department of
13 the United States relative to any person; and to afford information to
14 such department of motor vehicles, department of taxation and finance or
15 any successor to their duties, or to such treasury department relative
16 to any person, any other provision of this chapter to the contrary
17 notwithstanding;

18 4. To delegate the commissioner's functions hereunder to a deputy
19 commissioner of finance or any employee or employees of the department
20 of finance;

21 5. To assess, reassess, determine, revise and readjust the taxes
22 imposed under this chapter;

23 6. To provide methods for identifying motor vehicles not subject to or
24 exempt from the tax imposed under this chapter;

25 7. To provide that a certificate of registration need not be filed
26 with respect to any or all types of motor vehicles, or to provide that
27 such certificate of registration with respect to any or all types of
28 motor vehicles shall be contained on or combined with any return or
29 supplemental return required to be filed under this chapter.

30 § 11-816 Administration of oaths and compelling testimony. a. The
31 commissioner of finance, the commissioner's employees duly designated
32 and authorized by the commissioner, the tax appeals tribunal and any of
33 its duly designated and authorized employees shall have power to admin-
34 ister oaths and take affidavits in relation to any matter or proceeding
35 in the exercise of their powers and duties under this chapter. The
36 commissioner of finance and the tax appeals tribunal shall have power to
37 subpoena and require the attendance of witnesses and the production of
38 books, papers and documents to secure information pertinent to the
39 performance of the duties of the commissioner or of the tax appeals
40 tribunal hereunder and of the enforcement of this chapter and to examine
41 them in relation thereto, and to issue commissions for the examination
42 of witnesses who are out of the state or unable to attend before the
43 commissioner or the tax appeals tribunal or excused from attendance.

44 b. A justice of the supreme court either in court or at chambers shall
45 have power summarily to enforce by proper proceedings the attendance and
46 testimony of witnesses and the production and examination of books,
47 papers and documents called for by the subpoena of the commissioner of
48 finance or the tax appeals tribunal under this chapter.

49 c. Cross-reference; criminal penalties. For failure to obey subpoenas
50 or for testifying falsely, see section 11-4007 of the code of the
51 preceding municipality; for supplying false or fraudulent information,
52 see section 11-4009 of the code of the preceding municipality.

53 d. The officers who serve the summons or subpoena of the commissioner
54 of finance or the tax appeals tribunal hereunder and witnesses attending
55 in response thereto shall be entitled to the same fees as are allowed to
56 officers and witnesses in civil cases in courts of record, except as

1 herein otherwise provided. Such officers shall be the city sheriff, and
2 the sheriff's duly appointed deputies or any officers or employees of
3 the department of finance or the tax appeals tribunal, designated to
4 serve such process.

5 § 11-817 Interest and penalties. (a) Interest on underpayments. If
6 any amount of tax is not paid on or before the last date prescribed for
7 payment, without regard to any extension of time granted for payment,
8 interest on such amount at the rate set by the commissioner of finance
9 pursuant to subdivision (g) of this section, or, if no rate is set, at
10 the rate of seven and one-half percent per annum, shall be paid for the
11 period from such last date to the date of payment. In computing the
12 amount of interest to be paid, such interest shall be compounded daily.
13 Interest under this subdivision shall not be paid if the amount thereof
14 is less than one dollar.

15 (b) (1) Failure to file return. (A) In case of failure to file a
16 return under this chapter on or before the prescribed date, determined
17 with regard to any extension of time for filing, unless it is shown that
18 such failure is due to reasonable cause and not due to willful neglect,
19 there shall be added to the amount required to be shown as tax on such
20 return five percent of the amount of such tax if the failure is for not
21 more than one month, with an additional five percent for each additional
22 month or fraction thereof during which such failure continues, not
23 exceeding twenty-five percent in the aggregate.

24 (B) In the case of a failure to file a return of tax within sixty days
25 of the date prescribed for filing of such return, determined with regard
26 to any extension of time for filing, unless it is shown that such fail-
27 ure is due to reasonable cause and not due to willful neglect, the addi-
28 tion to tax under subparagraph (A) of this paragraph shall not be less
29 than the lesser of one hundred dollars or one hundred percent of the
30 amount required to be shown as tax on such return.

31 (C) For purposes of this paragraph, the amount of tax required to be
32 shown on the return shall be reduced by the amount of any part of the
33 tax which is paid on or before the date prescribed for payment of the
34 tax and by the amount of any credit against the tax which may be claimed
35 upon the return.

36 (2) Failure to pay tax shown on return. In case of failure to pay the
37 amount shown as tax on a return required to be filed under this chapter
38 on or before the prescribed date, determined with regard to any exten-
39 sion of time for payment, unless it is shown that such failure is due to
40 reasonable cause and not due to willful neglect, there shall be added to
41 the amount shown as tax on such return one-half of one percent of the
42 amount of such tax if the failure is not for more than one month, with
43 an additional one-half of one percent for each additional month or frac-
44 tion thereof during which such failure continues, not exceeding twenty-
45 five percent in the aggregate. For the purpose of computing the addition
46 for any month the amount of tax shown on the return shall be reduced by
47 the amount of any part of the tax which is paid on or before the begin-
48 ning of such month and by the amount of any credit against the tax which
49 may be claimed upon the return. If the amount of tax required to be
50 shown on a return is less than the amount shown as tax on such return,
51 this paragraph shall be applied by substituting such lower amount.

52 (3) Failure to pay tax required to be shown on return. In case of
53 failure to pay any amount in respect of any tax required to be shown on
54 a return required to be filed under this chapter which is not so shown,
55 including a determination made pursuant to section 11-810 of this chap-
56 ter, within ten days of the date of a notice and demand therefor, unless

1 it is shown that such failure is due to reasonable cause and not due to
2 willful neglect, there shall be added to the amount of tax stated in
3 such notice and demand one-half of one percent of such tax if the fail-
4 ure is not for more than one month, with an additional one-half of one
5 percent for each additional month or fraction thereof during which such
6 failure continues, not exceeding twenty-five percent in the aggregate.
7 For the purpose of computing the addition for any month, the amount of
8 tax stated in the notice and demand shall be reduced by the amount of
9 any part of the tax which is paid before the beginning of such month.

10 (4) Limitations on additions.

11 (A) With respect to any return, the amount of the addition under para-
12 graph one of this subdivision shall be reduced by the amount of the
13 addition under paragraph two of this subdivision for any month to which
14 an addition applies under both such paragraphs one and two. In any case
15 described in subparagraph (B) of paragraph one of this subdivision, the
16 amount of the addition under such paragraph one shall not be reduced
17 below the amount provided in such subparagraph.

18 (B) With respect to any return, the maximum amount of the addition
19 permitted under paragraph three of this subdivision shall be reduced by
20 the amount of the addition under paragraph one of this subdivision,
21 determined without regard to subparagraph (B) of such paragraph one,
22 which is attributable to the tax for which the notice and demand is made
23 and which is not paid within ten days of such notice and demand.

24 (c) Underpayment due to negligence. (1) If any part of an underpayment
25 of tax is due to negligence or intentional disregard of this chapter or
26 any rules or regulations hereunder, but without intent to defraud, there
27 shall be added to the tax a penalty equal to five percent of the under-
28 payment.

29 (2) There shall be added to the tax, in addition to the amount deter-
30 mined under paragraph one of this subdivision, an amount equal to fifty
31 percent of the interest payable under subdivision (a) of this section
32 with respect to the portion of the underpayment described in such para-
33 graph one which is attributable to the negligence or intentional disre-
34 gard referred to in such paragraph one, for the period beginning on the
35 last date prescribed by law for payment of such underpayment, determined
36 without regard to any extension, and ending on the date of the assess-
37 ment of the tax, or, if earlier, the date of the payment of the tax.

38 (d) Underpayment due to fraud. (1) If any part of an underpayment of
39 tax is due to fraud, there shall be added to the tax a penalty equal to
40 fifty percent of the underpayment.

41 (2) There shall be added to the tax, in addition to the penalty deter-
42 mined under paragraph one of this subdivision, an amount equal to fifty
43 percent of the interest payable under subdivision (a) of this section
44 with respect to the portion of the underpayment described in such para-
45 graph one which is attributable to fraud, for the period beginning on
46 the last day prescribed by law for payment of such underpayment, deter-
47 mined without regard to any extension, and ending on the date of the
48 assessment of the tax, or, if earlier, the date of the payment of the
49 tax.

50 (3) The penalty under this subdivision shall be in lieu of any other
51 addition to tax imposed by subdivision (b) or (c) of this section.

52 (e) Additional penalty. Any person who, with fraudulent intent, shall
53 fail to pay any tax imposed by this chapter, or to make, render, sign or
54 certify any return, or to supply any information within the time
55 required by or under this chapter, shall be liable for a penalty of not
56 more than one thousand dollars, in addition to any other amounts

1 required under this chapter to be imposed, assessed and collected by the
2 commissioner of finance. The commissioner of finance shall have the
3 power, in his or her discretion, to waive, reduce or compromise any
4 penalty under this subdivision.

5 (f) The interest and penalties imposed by this section shall be paid
6 and disposed of in the same manner as other revenues from this subchap-
7 ter. Unpaid interest and penalties may be enforced in the same manner as
8 the tax imposed by this chapter.

9 (g) (1) Authority to set interest rates. The commissioner of finance
10 shall set the rate of interest to be paid pursuant to subdivision (a) of
11 this section, but if no such rate of interest is set, such rate shall be
12 deemed to be set at seven and one-half percent per annum. Such rate
13 shall be the rate prescribed in paragraph two of this subdivision but
14 shall not be less than seven and one-half percent per annum. Any such
15 rate set by the commissioner of finance shall apply to taxes, or any
16 portion thereof, which remain or become due on or after the date on
17 which such rate becomes effective and shall apply only with respect to
18 interest computed or computable for periods or portions of periods
19 occurring in the period in which such rate is in effect.

20 (2) General rule. The rate of interest set under this subdivision
21 shall be the sum of (i) the federal short-term rate as provided under
22 paragraph three of this subdivision, plus (ii) seven percentage points.

23 (3) Federal short-term rate. For purposes of this subdivision:

24 (A) The federal short-term rate for any month shall be the federal
25 short-term rate determined by the United States secretary of the treas-
26 ury during such month in accordance with subsection (d) of section
27 twelve hundred seventy-four of the internal revenue code for use in
28 connection with section six thousand six hundred twenty-one of the
29 internal revenue code. Any such rate shall be rounded to the nearest
30 full percent, or, if a multiple of one-half of one percent, such rate
31 shall be increased to the next highest full percent.

32 (B) Period during which rate applies.

33 (i) In general. Except as provided in clause (ii) of this subpara-
34 graph, the federal short-term rate for the first month in each calendar
35 quarter shall apply during the first calendar quarter beginning after
36 such month.

37 (ii) Special rule for the month of September, nineteen hundred eight-
38 y-nine. The federal short-term rate for the month of April, nineteen
39 hundred eighty-nine shall apply with respect to setting the rate of
40 interest for the month of September, nineteen hundred eighty-nine.

41 (4) Publication of interest rate. The commissioner of finance shall
42 cause to be published in the City Record, and give other appropriate
43 general notice of, the interest rate to be set under this subdivision no
44 later than twenty days preceding the first day of the calendar quarter
45 during which such interest rate applies. The setting and publication of
46 such interest rate shall not be included within paragraph (a) of subdivi-
47 sion five of section one thousand forty-one of the city charter of the
48 preceding municipality as it existed January first, nineteen hundred
49 ninety-four relating to the definition of a rule.

50 (h) Miscellaneous. (1) The certificate of the commissioner of finance
51 to the effect that a tax has not been paid, that a motor vehicle has not
52 been registered, that a return has not been filed, or that information
53 has not been supplied pursuant to the provisions of this chapter, shall
54 be presumptive evidence thereof.

55 (2) Cross-reference: For criminal penalties, see chapter forty of this
56 title.

1 § 11-818 Information and records to be secret. a. Except in accord-
2 ance with proper judicial order, or as otherwise provided by law, it
3 shall be unlawful for the commissioner of finance, the tax appeals
4 tribunal, any other agency, officer or employee of the city, the commis-
5 sioner of motor vehicles, any officer or employee of the department of
6 motor vehicles, any agent of the commissioner of motor vehicles, or any
7 other person who, pursuant to this section, is permitted to inspect any
8 registration or return filed pursuant to this chapter, or to whom a
9 copy, an abstract or portion of any registration or return filed pursu-
10 ant to this chapter is furnished, or to whom any information contained
11 in any registration or return filed pursuant to this chapter is
12 furnished, to divulge or make known in any manner any information relat-
13 ing to or contained in any registration or any kind of return filed
14 pursuant to this chapter. The officers charged with the custody of such
15 registration and returns pertaining to the tax assessed pursuant to this
16 chapter shall not be required to produce any of them or evidence of
17 anything contained in them in any action or proceeding in any court,
18 except on behalf of the city, the commissioner of finance, the state or
19 the commissioner of motor vehicles, in an action or proceeding under the
20 provisions of this chapter, or on behalf of any party to any action or
21 proceeding under the provisions of this chapter when the registration,
22 return or facts shown therein are directly involved in such action or
23 proceeding, in either of which events, the court may require the
24 production of, and may admit in evidence, so much of said registration,
25 return, or of the facts shown therein, as are pertinent to the action or
26 proceeding and no more. The commissioner of finance may, nevertheless,
27 publish a copy or a summary of any determination or decision rendered
28 after a formal hearing held pursuant to section 11-810 or 11-811 of this
29 chapter. Nothing herein shall be construed to prohibit the delivery to a
30 person or such person's duly authorized representative of a certified
31 copy of any registration or return filed by such person; nor to prohibit
32 the delivery of any original return, with any notation that the commis-
33 sioner of finance or the commissioner of motor vehicles may cause to be
34 made thereon, to the person filing the return, whether such person files
35 the return on his or her own behalf or on behalf of another, or to the
36 person on whose behalf the return is filed; nor to prohibit the commis-
37 sioner of finance from providing by rule for the display or production
38 of any original return, as an indicium of payment of the tax imposed by
39 this chapter; nor to prohibit the publication of statistics so classi-
40 fied as to prevent the identification of particular registrations and
41 returns and the items thereof; nor to prohibit the delivery of a certi-
42 fied copy of any registration or return to the United States of America
43 or any department thereof, the state of New York or any department ther-
44 eof, the city of New York or any department thereof provided it is
45 requested for official business, nor to prohibit the inspection by the
46 corporation counsel or other legal representatives of the city, the
47 attorney general of the state of New York or other legal representatives
48 of the department of motor vehicles, or by the district attorney of any
49 county within the city of the registration or return of any person who
50 shall bring action to set aside or review any tax assessed pursuant to
51 this section, or against whom an action or proceeding under this chapter
52 is instituted. Returns, or reproductions thereof, pertaining to any
53 motor vehicle registered pursuant to this section shall be preserved for
54 three years and thereafter until the commissioner of finance or the
55 commissioner of motor vehicles permits them to be destroyed.

1 b. (1) Any officer or employee of the city or the state of New York
2 who willfully violates the provisions of subdivision a of this section
3 shall be dismissed from office and be incapable of holding any public
4 office in this city or the state of New York for a period of five years
5 thereafter.

6 (2) Cross-reference: For criminal penalties, see chapter forty of this
7 title.

8 c. This section shall be deemed a state statute for purposes of para-
9 graph (a) of subdivision two of section eighty-seven of the public offi-
10 cers law.

11 d. Notwithstanding anything in subdivision a of this section to the
12 contrary, if a taxpayer has petitioned the tax appeals tribunal for
13 administrative review as provided in section one hundred seventy of the
14 charter of the preceding municipality as it existed January first, nine-
15 teen hundred ninety-four, the commissioner of finance shall be author-
16 ized to present to the tribunal any report or return of such taxpayer,
17 or any information contained therein or relating thereto, which may be
18 material or relevant to the proceeding before the tribunal. The tax
19 appeals tribunal shall be authorized to publish a copy or a summary of
20 any decision rendered pursuant to section one hundred seventy-one of the
21 charter of the preceding municipality as it existed January first, nine-
22 teen hundred ninety-four.

23 § 11-819 Notices and limitations of time. a. Any notice authorized or
24 required under the provisions of this chapter may be given to the person
25 for whom it is intended by mailing it in a postpaid envelope addressed
26 to such person at the address given in the last registration of a motor
27 vehicle filed by such person pursuant to the provisions of this chapter,
28 or in any application made by such person, or if no such registration
29 has been filed or application made, then to such address as may be
30 obtainable. The mailing of a notice as in this subdivision provided for
31 shall be presumptive evidence of the receipt of the same by the person
32 to whom addressed. Any period of time which is determined according to
33 the provisions of this chapter by the giving of notice shall commence to
34 run from the date of mailing of such notice as in this subdivision
35 provided.

36 b. The provisions of the civil practice law and rules or any other law
37 relative to limitations of time for the enforcement of a civil remedy
38 shall not apply to any proceeding or action taken by the city to levy,
39 appraise, assess, determine or enforce the collection of any tax or
40 penalty provided by this chapter. However, except in the case of a
41 wilfully false or fraudulent registration or return with intent to evade
42 the tax, no assessment of additional tax shall be made after the expira-
43 tion of more than three years from the date of such return; provided,
44 however, that where no registration or no return has been made as
45 provided by law, the tax may be assessed at any time.

46 c. Where before the expiration of the period prescribed in this
47 section for the assessment of an additional tax, a person has consented
48 in writing that such period be extended, the amount of such additional
49 tax due may be determined at any time within such extended period. The
50 period so extended may be further extended by subsequent consents in
51 writing made before the expiration of the extended period.

52 d. If any return, claim, statement, notice, application, or other
53 document required to be filed, or any payment required to be made, with-
54 in a prescribed period or on or before a prescribed date under authority
55 of any provision of this chapter is, after such period or such date,
56 delivered by United States mail to the commissioner of finance, commis-

1 sioner of motor vehicles, the tax appeals tribunal, bureau, office,
2 officer or person with which or with whom such document is required to
3 be filed, or to which or to whom such payment is required to be made,
4 the date of the United States postmark stamped on the envelope shall be
5 deemed to be the date of delivery. This subdivision shall apply only if
6 the postmark date falls within the prescribed period or on or before the
7 prescribed date for the filing of such document, or for making the
8 payment, including any extension granted for such filing or payment, and
9 only if such document or payment was deposited in the mail, postage
10 prepaid, properly addressed to the commissioner of finance, commissioner
11 of motor vehicles, the tax appeals tribunal, bureau, office, officer or
12 person with which or with whom the document is required to be filed or
13 to which or to whom such payment is required to be made. If any document
14 is sent by United States registered mail, such registration shall be
15 prima facie evidence that such document was delivered to the commission-
16 er of finance, commissioner of motor vehicles, the tax appeals tribunal,
17 bureau, office, officer or person to which or to whom addressed, and the
18 date of registration shall be deemed the postmark date. The commissioner
19 of finance or, where relevant, the tax appeals tribunal is authorized to
20 provide by regulation the extent to which the provisions of this subdivi-
21 sion with respect to prima facie evidence of delivery and the postmark
22 date shall apply to certified mail. Except as provided in subdivision f
23 of this section, this subdivision shall apply in the case of postmarks
24 not made by the United States postal service only if and to the extent
25 provided by rule of the commissioner of finance or, where relevant, the
26 tax appeals tribunal.

27 e. When the last day prescribed under authority of this chapter,
28 including any extension of time, for performing any act falls on a
29 Saturday, Sunday or legal holiday in the state of New York, the perform-
30 ance of such act shall be considered timely if it is performed on the
31 next succeeding day which is not a Saturday, Sunday or legal holiday.

32 f. (1) Any reference in subdivision d of this section to the United
33 States mail shall be treated as including a reference to any delivery
34 service designated by the secretary of the treasury of the United States
35 pursuant to section seventy-five hundred two of the internal revenue
36 code and any reference in subdivision d of this section to a United
37 States postmark shall be treated as including a reference to any date
38 recorded or marked in the manner described in section seventy-five
39 hundred two of the internal revenue code by a designated delivery
40 service. If the commissioner of finance finds that any delivery service
41 designated by such secretary is inadequate for the needs of the city,
42 the commissioner of finance may withdraw such designation for purposes
43 of this title. The commissioner of finance may also designate additional
44 delivery services meeting the criteria of section seventy-five hundred
45 two of the internal revenue code for purposes of this title, or may
46 withdraw any such designation if the commissioner of finance finds that
47 a delivery service so designated is inadequate for the needs of the
48 city. Any reference in subdivision d of this section to the United
49 States mail shall be treated as including a reference to any delivery
50 service designated by the commissioner of finance and any reference in
51 subdivision d of this section to a United States postmark shall be
52 treated as including a reference to any date recorded or marked in the
53 manner described in section seventy-five hundred two of the internal
54 revenue code by a delivery service designated by the commissioner of
55 finance. Notwithstanding the provisions of this paragraph, any with-
56 drawal of designation or additional designation by the commissioner of

1 finance shall not be effective for purposes of service upon the tax
2 appeals tribunal, unless and until such withdrawal of designation or
3 additional designation is ratified by the president of the tax appeals
4 tribunal.

5 (2) Any equivalent of registered or certified mail designated by the
6 United States secretary of the treasury, or as may be designated by the
7 commissioner of finance pursuant to the same criteria used by such
8 secretary for such designations pursuant to section seventy-five hundred
9 two of the internal revenue code, shall be included within the meaning
10 of registered or certified mail as used in subdivision d of this
11 section. If the commissioner of finance finds that any equivalent of
12 registered or certified mail designated by such secretary or the commis-
13 sioner of finance is inadequate for the needs of the city, the commis-
14 sioner of finance may withdraw such designation for purposes of this
15 title. Notwithstanding the provisions of this paragraph, any withdrawal
16 of designation or additional designation by the commissioner of finance
17 shall not be effective for purposes of service upon the tax appeals
18 tribunal, unless and until such withdrawal of designation or additional
19 designation is ratified by the president of the tax appeals tribunal.

20 § 11-820 Construction and enforcement. This chapter shall be
21 construed and enforced in conformity with chapter one thousand thirty-
22 two of the laws of nineteen hundred sixty, pursuant to which it is
23 enacted.

24 CHAPTER 9

25 TAX UPON FOREIGN AND ALIEN INSURERS

26 § 11-901 Definitions. Wherever used in this chapter, the following
27 words and phrases shall mean and include:

28 "Alien insurer." Any insurer incorporated or organized under the laws
29 of any foreign nation, or of any province or territory not included
30 under the definition of a foreign insurer.

31 "Foreign insurer." Any insurer, except a mutual insurance company
32 taxed under the provisions of section nine thousand one hundred five of
33 the insurance law, incorporated or organized under the laws of any
34 state, as herein defined, other than this state.

35 "Fire insurance corporation, association or individuals." Any insurer,
36 regardless of the name, designation or authority under which it purports
37 to act, which insures property of any kind or nature against loss or
38 damage by fire.

39 "Loss or damage by fire." Loss or damage by fire, lightning, smoke or
40 anything used to combat fire, regardless of whether such risks or the
41 premiums therefor are stated or charged separately and apart from any
42 other risk or premium.

43 "State." Any state of the United States and the District of Columbia.

44 "Commissioner of finance." The commissioner of finance of the city or
45 any other officer of the city designated to perform the same functions.

46 "Department of finance." The department of finance of the city or any
47 other agency or department designated to perform the same functions.

48 "Fire commissioner." The fire commissioner of the city.

49 "Comptroller." The comptroller of the city.

50 "Tax appeals tribunal." The tax appeals tribunal established by
51 section one hundred sixty-eight of the charter of the preceding munici-
52 pality as it existed January first, nineteen hundred ninety-four.

53 § 11-902 General powers of the commissioner of finance. In addition
54 to all other powers granted to the commissioner of finance under this
55 chapter, the commissioner is hereby authorized and empowered:

1 1. To make, adopt and amend rules and regulations appropriate to the
2 carrying out of this chapter and the purposes thereof.

3 2. To compromise disputed claims in connection with taxes hereby
4 imposed.

5 3. To delegate his or her functions hereunder to any officer or
6 employee of the department of finance.

7 4. To prescribe reasonable methods, approved by the New York state
8 superintendent of insurance, for determining the amounts of premiums
9 subject to the tax.

10 5. To require any foreign or alien insurer subject to the tax to keep
11 detailed records of the premiums in a manner reasonably designed to show
12 the amounts thereof subject to the tax and to furnish such information
13 on request.

14 6. To assess, determine, revise and adjust the tax imposed under this
15 chapter.

16 7. To audit the reports of any insurer.

17 8. To allow an extension of time not in excess of thirty days for
18 filing the report and paying the tax required by this chapter, provided
19 the taxpayer requests such extension in writing prior to the date
20 prescribed for such filing and such payment by sections 11-904 and
21 11-903 of this chapter.

22 § 11-903 Tax on premiums on policies of foreign and alien insurers.
23 There shall be paid to the department of finance for the use and benefit
24 of the fire department of the city, on or before the first day of March,
25 in each year by every foreign and alien fire insurance corporation,
26 association or individuals which insure property against loss or damage
27 by fire, the sum of two percent of all gross direct premiums less return
28 premiums which, during the year ending on the preceding thirty-first day
29 of December, shall have been received by any such insurer for any insur-
30 ance against loss or damage by fire in the city. Any such insurer which
31 in any year shall cease or terminate doing business in the city shall
32 pay the tax for such year within thirty days after such cessation or
33 termination.

34 § 11-904 Report of premiums by insurers. Each insurer required to pay
35 a tax under this chapter shall, at the time such tax is paid or payable,
36 whichever is sooner, render to the commissioner of finance a verified
37 report setting forth such information as may be required by the commis-
38 sioner for the determination of the tax and the proper administration of
39 this chapter. The commissioner of finance shall prescribe the form and
40 furnish the necessary forms to enable such insurers to make such
41 reports. The commissioner or the commissioner's designated represen-
42 tative or the tax appeals tribunal or its designated representative
43 shall have power to examine any such insurer under oath and to require
44 the production by such insurer of all books and papers as the commis-
45 sioner or the tax appeals tribunal may deem necessary. All expenses of
46 collecting such tax shall be paid by the commissioner of finance from
47 the funds received under this chapter prior to the distribution thereof
48 as hereinafter authorized.

49 § 11-905 Interest and penalties. (a) Interest on underpayments. If any
50 amount of tax is not paid on or before the last date prescribed for
51 payment, without regard to any extension of time granted for payment,
52 interest on such amount at the underpayment rate set by the commissioner
53 of finance pursuant to subdivision (g) of this section, or, if no rate
54 is set, at the rate of seven and one-half percent per annum, shall be
55 paid for the period from such last date to the date of payment. In
56 computing the amount of interest to be paid, such interest shall be

1 compounded daily. Interest under this subdivision shall not be paid if
2 the amount thereof is less than one dollar.

3 (b) (1) Failure to file return. (A) In case of failure to file a
4 return under this chapter on or before the prescribed date, determined
5 with regard to any extension of time for filing, unless it is shown that
6 such failure is due to reasonable cause and not due to willful neglect,
7 there shall be added to the amount required to be shown as tax on such
8 return five percent of the amount of such tax if the failure is for not
9 more than one month, with an additional five percent for each additional
10 month or fraction thereof during which such failure continues, not
11 exceeding twenty-five percent in the aggregate.

12 (B) In the case of a failure to file a return of tax within sixty days
13 of the date prescribed for filing of such return, determined with regard
14 to any extension of time for filing, unless it is shown that such fail-
15 ure is due to reasonable cause and not due to willful neglect, the addi-
16 tion to tax under subparagraph (A) of this paragraph shall not be less
17 than the lesser of one hundred dollars or one hundred percent of the
18 amount required to be shown as tax on such return.

19 (C) For purposes of this paragraph, the amount of tax required to be
20 shown on the return shall be reduced by the amount of any part of the
21 tax which is paid on or before the date prescribed for payment of the
22 tax and by the amount of any credit against the tax which may be claimed
23 upon the return.

24 (2) Failure to pay tax shown on return. In case of failure to pay the
25 amount shown as tax on a return required to be filed under this chapter
26 on or before the prescribed date, determined with regard to any exten-
27 sion of time for payment, unless it is shown that such failure is due to
28 reasonable cause and not due to willful neglect, there shall be added to
29 the amount shown as tax on such return one-half of one percent of the
30 amount of such tax if the failure is not for more than one month, with
31 an additional one-half of one percent for each additional month or frac-
32 tion thereof during which such failure continues, not exceeding twenty-
33 five percent in the aggregate. For the purpose of computing the addition
34 for any month the amount of tax shown on the return shall be reduced by
35 the amount of any part of the tax which is paid on or before the begin-
36 ning of such month and by the amount of any credit against the tax which
37 may be claimed upon the return. If the amount of tax required to be
38 shown on a return is less than the amount shown as tax on such return,
39 this paragraph shall be applied by substituting such lower amount.

40 (3) Failure to pay tax required to be shown on return. In case of
41 failure to pay any amount in respect of any tax required to be shown on
42 a return required to be filed under this chapter which is not so shown,
43 including a determination made pursuant to section 11-906 of this chap-
44 ter, within ten days of the date of a notice and demand therefor, unless
45 it is shown that such failure is due to reasonable cause and not due to
46 willful neglect, there shall be added to the amount of tax stated in
47 such notice and demand one-half of one percent of such tax if the fail-
48 ure is not for more than one month, with an additional one-half of one
49 percent for each additional month or fraction thereof during which such
50 failure continues, not exceeding twenty-five percent in the aggregate.
51 For the purpose of computing the addition for any month, the amount of
52 tax stated in the notice and demand shall be reduced by the amount of
53 any part of the tax which is paid before the beginning of such month.

54 (4) Limitations on additions.

55 (A) With respect to any return, the amount of the addition under para-
56 graph one of this subdivision shall be reduced by the amount of the

1 addition under paragraph two of this subdivision for any month to which
2 an addition applies under both paragraphs one and two of this subdivi-
3 sion. In any case described in subparagraph (B) of paragraph one of
4 this subdivision, the amount of the addition under such paragraph one
5 shall not be reduced below the amount provided in such subparagraph.

6 (B) With respect to any return, the maximum amount of the addition
7 permitted under paragraph three of this subdivision shall be reduced by
8 the amount of the addition under paragraph one of this subdivision,
9 determined without regard to subparagraph (B) of such paragraph one
10 which is attributable to the tax for which the notice and demand is made
11 and which is not paid within ten days of such notice and demand.

12 (c) Underpayment due to negligence. (1) If any part of an underpayment
13 of tax is due to negligence or intentional disregard of this chapter or
14 any rules and regulations hereunder, but without intent to defraud,
15 there shall be added to the tax a penalty equal to five percent of the
16 underpayment.

17 (2) There shall be added to the tax, in addition to the amount deter-
18 mined under paragraph one of this subdivision an amount equal to fifty
19 percent of the interest payable under subdivision (a) of this section
20 with respect to the portion of the underpayment described in such para-
21 graph one which is attributable to the negligence or intentional disre-
22 gard referred to in such paragraph one, for the period beginning on the
23 last date prescribed by law for payment of such underpayment, determined
24 without regard to any extension, and ending on the date of the assess-
25 ment of the tax, or, if earlier, the date of the payment of the tax.

26 (d) Underpayment due to fraud. (1) If any part of an underpayment of
27 tax is due to fraud, there shall be added to the tax a penalty equal to
28 fifty percent of the underpayment.

29 (2) There shall be added to the tax, in addition to the penalty deter-
30 mined under paragraph one of this subdivision, an amount equal to fifty
31 percent of the interest payable under subdivision (a) of this section
32 with respect to the portion of the underpayment described in such para-
33 graph one which is attributable to fraud, for the period beginning on
34 the last day prescribed by law for payment of such underpayment, deter-
35 mined without regard to any extension, and ending on the date of the
36 assessment of the tax, or, if earlier, the date of the payment of the
37 tax.

38 (3) The penalty under this subdivision shall be in lieu of any other
39 addition to tax imposed by subdivision (b) or (c) of this section.

40 (e) Additional penalty. Any insurer who, with fraudulent intent, shall
41 fail to pay any tax imposed by this chapter, or to make, render, sign or
42 certify any return, or to supply any information within the time
43 required by or under this chapter, shall be liable for a penalty of not
44 more than one thousand dollars, in addition to any other amounts
45 required under this chapter to be imposed, assessed and collected by the
46 commissioner of finance. The commissioner of finance shall have the
47 power, in his or her discretion, to waive, reduce or compromise any
48 penalty under this subdivision.

49 (f) The interest and penalties imposed by this section shall be paid
50 and disposed of in the same manner as other revenues from this chapter.
51 Unpaid interest and penalties may be enforced in the same manner as the
52 tax imposed by this chapter.

53 (g) (1) Authority to set interest rates. The commissioner of finance
54 shall set the overpayment and underpayment rates of interest to be paid
55 pursuant to subdivision (a) of this section and subdivision (a) of
56 section 11-906 of this chapter, but if no such overpayment rate of

1 interest are set, such rate or rates shall be deemed to be set at six
2 percent per annum and such underpayment rate shall be deemed to be set
3 at seven and one-half percent per annum. Such rates shall be the over-
4 payment and underpayment rates prescribed in paragraph two of this
5 subdivision but the underpayment rate shall not be less than seven and
6 one-half percent per annum. Any such rates set by the commissioner of
7 finance shall apply to taxes, or any portion thereof, which remain or
8 become due or overpaid on or after the date on which such rates become
9 effective and shall apply only with respect to interest computed or
10 computable for periods or portions of periods occurring in the period in
11 which such rates are in effect.

12 (2) General rule. (A) Overpayment rate. The overpayment rate set under
13 this subdivision shall be the sum of (i) the federal short-term rate as
14 provided under paragraph three of this subdivision, plus (ii) two
15 percentage points.

16 (B) Underpayment rate. The underpayment rate set under this subdivi-
17 sion shall be the sum of (i) the federal short-term rate as provided
18 under paragraph three of this subdivision, plus (ii) seven percentage
19 points.

20 (3) Federal short-term rate. For purposes of this subdivision:

21 (A) The federal short-term rate for any month shall be the federal
22 short-term rate determined by the United States secretary of the treas-
23 ury during such month in accordance with subsection (d) of section
24 twelve hundred seventy-four of the internal revenue code for use in
25 connection with section six thousand six hundred twenty-one of the
26 internal revenue code. Any such rate shall be rounded to the nearest
27 full percent, or, if a multiple of one-half of one percent, such rate
28 shall be increased to the next highest full percent.

29 (B) Period during which rate applies.

30 (i) In general. Except as provided in clause (ii) of this subpara-
31 graph, the federal short-term rate for the first month in each calendar
32 quarter shall apply during the first calendar quarter beginning after
33 such month.

34 (ii) Special rule for the month of September, nineteen hundred eight-
35 y-nine. The federal short-term rate for the month of April, nineteen
36 hundred eighty-nine shall apply with respect to setting the rate of
37 interest for the month of September, nineteen hundred eighty-nine.

38 (4) Publication of interest rate. The commissioner of finance shall
39 cause to be published in the City Record, and give other appropriate
40 general notice of, the interest rate to be set under this subdivision no
41 later than twenty days preceding the first day of the calendar quarter
42 during which such interest rate applies. The setting and publication of
43 such interest rate shall not be included within paragraph (a) of subdivi-
44 sion five of section one thousand forty-one of the city charter of the
45 preceding municipality as it existed January first, nineteen hundred
46 ninety-four relating to the definition of a rule.

47 § 11-906 Assessment, refund, collection, review and reserves. (a) The
48 provisions of the civil practice law and rules or any other law relative
49 to limitations of time for the enforcement of a civil remedy shall not
50 apply to any proceeding or action by the commissioner of finance to
51 levy, assess, determine or enforce the collection of tax, interest or
52 penalty imposed by this chapter. However, except in the case of a
53 wilfully false or fraudulent report, no assessment of additional tax,
54 interest or penalty shall be made after the expiration of more than
55 three years from the date of the filing of a report, provided, however,
56 that where no report has been filed as provided by law the tax may be

1 assessed at any time. The commissioner of finance shall refund or cred-
2 it, with interest at the overpayment rate set by the commissioner of
3 finance pursuant to subdivision (g) of section 11-905 of this chapter
4 or, if no rate is set, at the rate of six percent per annum computed
5 from the date of overpayment to a date, to be determined by the commis-
6 sioner of finance, preceding the date of a refund check by not more than
7 thirty days, any tax, penalty or interest erroneously, illegally or
8 unconstitutionally collected or paid if application to the commissioner
9 of finance for such refund shall be made within six months from the
10 payment thereof. Notice of any determination of the commissioner of
11 finance with respect to an assessment of tax, interest or penalty or
12 with respect to a claim for refund or any other notice, demand or
13 request shall be given by mailing the same to the insurer to the address
14 of its city of Staten Island office last filed with the commissioner of
15 finance or, if there is no such office, to the address of its main
16 office last filed with the commissioner of finance or, in the absence of
17 any filed address, to such address as may be obtainable. The mailing of
18 any notice, demand or request by the commissioner of finance shall be
19 presumptive evidence of its receipt by the insurer and any period of
20 time to be determined with reference to the giving of such notice,
21 demand or request shall commence to run from the date of such mailing.
22 The determination of the commissioner of finance shall finally and irre-
23 vocably fix the amount of any tax, interest or penalty due or to be
24 refunded unless the taxpayer, within ninety days after the giving of
25 notice of such determination, or if the commissioner of finance has
26 established a conciliation procedure pursuant to section 11-124 of this
27 title and the taxpayer has requested a conciliation conference in
28 accordance therewith, within ninety days from the mailing of a concil-
29 iation decision or the date of the commissioner's confirmation of the
30 discontinuance of the conciliation proceeding, both (1) serves a peti-
31 tion upon the commissioner of finance and (2) files a petition with the
32 tax appeals tribunal for a hearing, or unless the commissioner of
33 finance of his or her own motion shall redetermine the same. Such hear-
34 ing and any appeal to the tax appeals tribunal sitting en banc from the
35 decision rendered in such hearing shall be conducted in the manner and
36 subject to the requirements prescribed by the tax appeals tribunal
37 pursuant to sections one hundred sixty-eight through one hundred seven-
38 ty-two of the charter of the preceding municipality as it existed Janu-
39 ary first, nineteen hundred ninety-four. After such hearing the tax
40 appeals tribunal shall give notice of its decision to the taxpayer and
41 to the commissioner of finance with reference to the amount of the tax,
42 interest or penalty assessed or to be refunded. The decision of the tax
43 appeals tribunal sitting en banc shall be reviewable for error, illegal-
44 ity or unconstitutionality or any other reason, by a proceeding under
45 article seventy-eight of the civil practice law and rules if such
46 proceeding is commenced by the person against whom the tax was assessed
47 within four months after the giving of the notice of such tax appeals
48 tribunal decision. Such proceeding shall not be commenced by the taxpay-
49 er unless: (1) the amount of any tax assessed and sought to be reviewed
50 with penalties and interest thereon, if any, shall be first deposited
51 with the commissioner of finance and there shall be filed with the
52 commissioner of finance an undertaking in such amount and with such
53 sureties as a justice of the supreme court shall approve, to the effect
54 that if such proceeding be dismissed or the decision confirmed, the
55 taxpayer will pay all costs and charges which may accrue against the
56 taxpayer in the prosecution of the proceeding, or (2) in the case of a

1 review of a decision assessing any taxes, penalties and interest, at the
2 option of the taxpayer, such undertaking may be in a sum sufficient to
3 cover all of the taxes, penalties and interest assessed by such decision
4 plus the costs and charges which may accrue against the taxpayer in the
5 prosecution of the proceeding, in which event the taxpayer shall not be
6 required to deposit such taxes, penalties and interest as a condition
7 precedent to the commencement of the proceeding. No determination or
8 proposed determination of tax, interest or penalty due or to be refunded
9 shall be reviewed or enjoined in any manner except as set forth herein.

10 (b) In cases where the taxpayer has applied for a refund and has
11 commenced a proceeding under article seventy-eight of the civil practice
12 law and rules to review a decision of the tax appeals tribunal adverse
13 to such taxpayer on its application for a refund, the commissioner of
14 finance shall set up appropriate reserves to meet any decision adverse
15 to the city.

16 (c) In computing the amount of interest to be paid under this section,
17 such interest shall be compounded daily.

18 § 11-907 Place of business to be reported. Every insurer, on or
19 before the first day of March in each year, and as often in each year as
20 such insurer shall change its principal place of business or change or
21 terminate any office or place of business in the city, shall report in
22 writing, to the commissioner of finance, the location of its principal
23 place of business and any new principal place of business or of any new
24 office or place of business in the city or of the termination of any
25 such office or place of business. In the event of such change or termi-
26 nation, such report shall be made no later than fifteen days after such
27 change or termination. Any insurer who fails or neglects to make such
28 report within the time limited therefor shall be subject to a penalty of
29 one hundred dollars and, in addition thereto, fifty dollars for each
30 month or part thereof during which such report is not made. The total
31 of such penalties shall not exceed one thousand dollars.

32 § 11-908 Suits for violations. The tax provided to be paid by this
33 chapter, and the pecuniary penalties and interest imposed therein, or
34 any or either of them, may be sued for and recovered, with costs of
35 suit, in any court of record, by the commissioner of finance.

36 § 11-909 Distribution of tax on policies covering property in the city
37 of Staten Island. (a) The moneys received by the commissioner of finance
38 as a tax on policies covering property in the city shall be disbursed by
39 the commissioner of finance as follows:

40 1. Ten percent to the firemen's association of the state of New York,
41 for the endowment, benefit and maintenance of the volunteer firemen's
42 home at Hudson, but in no event to exceed the sum of thirty-five thou-
43 sand dollars annually.

44 2. The balance to the general fund of the city established pursuant to
45 section one hundred nine of the charter, except as provided in paragraph
46 three of this subdivision.

47 3. a. Volunteer firemen's benevolent fund; trustee. From the balance
48 specified in paragraph two of this subdivision, a sum, not to exceed one
49 hundred fifty thousand dollars in any one year, shall be paid into a
50 fund to be known as the volunteer firemen's benevolent fund, which shall
51 be administered as provided by the fire commissioner, as trustee of such
52 fund, for the benefit of indigent volunteer firefighters, their surviv-
53 ing spouses and orphans.

54 b. Persons entitled to benefits from fund. All funds received by the
55 fire commissioner as trustee under this paragraph shall be expended by
56 the fire commissioner for the relief of:

1 (i) all indigent volunteer firefighters who served as such for a peri-
2 od of five years in a duly organized volunteer fire company in the
3 former towns of New Lots, Flatlands, Gravesend, New Utrecht and Flatbush
4 in the county of Kings, or in the territory now included in the city of
5 Staten Island, or in the territory now included in the borough of
6 Queens, or in the territory now included in the borough of the Bronx,
7 and who were honorably discharged after such five years of service, or
8 who having been members of a duly organized volunteer fire company with-
9 in any such town or territory, which company was disbanded by reason of
10 the installation of a paid fire department, and were members of such
11 company for at least one year prior to its disbandment;

12 (ii) the surviving spouses and orphans of any such volunteer fire-
13 fighters.

14 c. Fund benefits of beneficiaries on rolls as of December thirty-
15 first, nineteen hundred fifty-one. During the lifetime of those relief
16 beneficiaries who appear as such as of December thirty-first, nineteen
17 hundred fifty-one upon the records of the trustees of the exempt fire-
18 men's benevolent fund of the county of Kings, or of the trustees of the
19 exempt firemen's benevolent fund of the borough of Queens, or of the
20 trustees of the exempt firemen's benevolent fund of the borough of
21 Staten Island, or of the trustees of the exempt firemen's benevolent
22 fund of the borough of the Bronx, it shall be the duty of the fire
23 commissioner, as such trustee, to pay to such beneficiaries from the
24 volunteer firemen's benevolent fund referred to in subparagraph a of
25 this paragraph, the same amounts as were being periodically paid to such
26 beneficiaries as of June thirtieth, nineteen hundred fifty-two.

27 d. Fund benefits of residents of firemen's home. It shall be the duty
28 of the fire commissioner, as such trustee, to pay from such fund
29 referred to in subparagraph a of this paragraph, the sum of ten dollars
30 monthly to each volunteer firefighter in residence at the volunteer
31 firemen's home at Hudson, who qualified for entrance into such home by
32 reason of service as a volunteer firefighter within the area now
33 included within the boundaries of the city. No other payments shall be
34 made from such fund to any such volunteer firefighter while in residence
35 at such home.

36 e. Eligibility of persons who applied for fund benefits after December
37 thirty-first, nineteen hundred fifty-one, and prior to the establishment
38 of fund. Upon the establishment of the volunteer firemen's benevolent
39 fund referred to in subparagraph a of this paragraph, the fire commis-
40 sioner or the fire commissioner's authorized subordinates shall investi-
41 gate and determine the need for benefits of all persons who, after
42 December thirty-first, nineteen hundred fifty-one and prior to the
43 establishment of such volunteer firemen's benevolent fund, applied for
44 benefits payable from any of the benevolent funds mentioned in subpara-
45 graph c of this paragraph, and who are receiving benefits therefrom at
46 the time of the establishment of such fund referred to in subparagraph a
47 of this paragraph. No such person shall be found to be in need of bene-
48 fits, nor shall any such person be paid any benefits from such last-men-
49 tioned fund unless the fire commissioner or the fire commissioner's
50 authorized subordinates shall determine that such person is indigent. In
51 the event that any such person is thus found to be in need of benefits,
52 the fire commissioner shall pay to such person from such last-mentioned
53 fund, the same periodic amounts as the trustees mentioned in subpara-
54 graph c of this paragraph were paying as of June thirtieth, nineteen
55 hundred fifty-two, to a person who had the same status and who was
56 receiving benefits from the borough or county fund which would be

1 currently liable for the payment of benefits to such person, but for the
2 provision of section 13-532 of the code of the preceding municipality.
3 It shall be the duty of the fire commissioner and the fire commission-
4 er's authorized subordinates to maintain and carry out continuously,
5 such investigation procedures as may be necessary to assure that bene-
6 fits will not be paid from such fund to any persons who are not in need
7 as herein specified.

8 f. Eligibility for benefits of persons applying therefor after estab-
9 lishment of fund. All persons applying after the establishment of the
10 volunteer firemen's benevolent fund for benefits payable therefrom shall
11 be investigated as to need by the fire commissioner or the fire commis-
12 sioner's authorized subordinates, and the eligibility of such persons
13 for benefits and the amount thereof to be awarded and paid to them shall
14 be determined by the fire commissioner or the fire commissioner's
15 authorized subordinates in accordance with the standards specified in
16 subparagraph e of this paragraph. Benefits shall be paid from such fund
17 to eligible persons in accordance with such determination and it shall
18 be the duty of the fire commissioner and the fire commissioner's subor-
19 dinates continuously to maintain and carry out as to such persons inves-
20 tigation procedures such as are described in subparagraph e of this
21 paragraph. The fire commissioner, as part of his or her investigation to
22 determine eligibility of persons for fund benefits, shall request from
23 the duly appointed representative of the volunteer firefighters in each
24 borough a report on such person's service and indigency. Such report
25 shall be solely for the information of the fire commissioner and shall
26 not be binding upon the fire commissioner in arriving at a determination
27 as to eligibility. In the event that such report is not submitted within
28 ten days from the date of request, the fire commissioner shall determine
29 eligibility on the basis of the facts developed in the fire commission-
30 er's own investigation.

31 g. Excess moneys. In the event that the benefits paid by the fire
32 commissioner, as trustee, during any period of one year beginning on the
33 first day of February shall not equal the sum of one hundred fifty thou-
34 sand dollars, the unexpended balance shall be paid into the general fund
35 of the city established pursuant to section one hundred nine of the
36 charter, except that the fire commissioner may retain in the volunteer
37 firemen's benevolent fund such amount as may be necessary to meet the
38 commitments of such fund until the revenue from the tax collected under
39 this chapter in the ensuing taxable year shall become available.

40 h. Depositories. The fire commissioner, as trustee, is hereby
41 empowered and directed to receive all moneys and assets belonging or
42 payable to such volunteer firemen's benevolent fund and shall deposit
43 all such moneys to the credit of such fund in banks and trust companies
44 to be selected by the fire commissioner.

45 i. Bond. The fire commissioner, as trustee of such fund, shall give a
46 bond with one or more sureties, in a sum sufficient for the faithful
47 performance of his or her duties, such bond to be approved as to amount
48 and adequacy, by the comptroller and filed in the comptroller's office.

49 j. Records. The officers and employees of the fire department who are
50 responsible for the maintenance of the books and records of the New York
51 fire department pension fund shall have charge of, and keep the accounts
52 of the fire commissioner as trustee of the volunteer firemen's benevo-
53 lent fund.

54 k. Reports. The fire commissioner, as trustee of such volunteer fire-
55 men's benevolent fund, shall submit to the mayor on or before the first
56 day of April of each year, a verified report in which shall be set forth

1 the account of the fire commissioner's proceedings as such trustee
2 during the twelve-month period ending on the thirty-first day of January
3 immediately preceding. Such report shall include a statement of all
4 receipts and disbursements on account of such benevolent fund, a list of
5 the names, residences and as nearly as possible, the ages of the benefi-
6 ciaries of such fund and the respective amounts paid to them during such
7 period.

8 1. Audit. The comptroller shall have the power to audit the books and
9 records of the fire commissioner as trustee of the volunteer firemen's
10 benevolent fund.

11 (b) The moneys received by the fire commissioner as trustee pursuant
12 to the provisions of paragraph three of subdivision (a) of this section
13 shall be expended by the fire commissioner only as provided in such
14 paragraph.

15 CHAPTER 10

16 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

17 § 11-1001 Legislative findings. It is hereby declared that: In
18 certain areas of the city of Staten Island there exist unsanitary or
19 substandard housing conditions owing to overcrowding and concentration
20 of population, improper planning, excessive land coverage, lack of prop-
21 er light, air and space, unsanitary design and arrangement, or lack of
22 proper sanitary facilities; there is not an adequate supply of decent,
23 safe and sanitary dwelling accommodations for persons of low income;
24 these conditions cause an increase and spread of disease and crime and
25 constitute a menace to the health, safety, morals, welfare and comfort
26 of the citizens of the state, and impair economic values; these condi-
27 tions cannot be remedied by the ordinary operation of private enter-
28 prise; the clearance, replanning and reconstruction of the areas in
29 which unsanitary or substandard housing conditions exist and the provid-
30 ing of decent, safe and sanitary dwelling accommodations in such areas
31 and elsewhere for persons of low income are public uses and purposes for
32 which public money may be spent and private property acquired; therefore
33 the necessity in the public interest to enact the provisions of this
34 chapter is hereby declared, as a matter of legislative determination.

35 § 11-1002 Low rent housing and slum clearance; governmental functions.
36 It is hereby declared as a matter of legislative determination that the
37 clearing of areas in which the conditions described in section 11-1001
38 of this chapter exist and the furnishing of low rent housing for the
39 occupants thereof be hereafter a function of the government of the city
40 of Staten Island.

41 § 11-1003 Housing authority; agent for city. It is hereby declared
42 that the city housing authority be and it hereby is appointed as the
43 agent for the city of Staten Island to carry out the functions described
44 in section 11-1002 of this chapter.

45 § 11-1004 Definitions. When used in this chapter: a. The word "occu-
46 pation" means the use or possession for a consideration of any premises
47 under any lease, concession, permit, right of access, license to use, or
48 other agreement, for any gainful purpose.

49 b. The word "occupant" means any person who uses or possesses for a
50 consideration any premises under any lease, concession, permit, right of
51 access, license to use or other agreement for any gainful purpose.

52 c. The word "person" means an individual, co-partnership, society,
53 association, joint-stock company, corporation, estate, receiver, assign-

1 nee, trustee or any other person acting in a fiduciary capacity, whether
2 appointed by a court or otherwise, and any combination of individuals.

3 d. The word "premises" means any real property, or any part thereof,
4 any kind of space, or structure, except premises, as defined in this
5 subdivision, which are located in, upon, above or under any public
6 street, highway or public place, separately occupied in the city of
7 Staten Island by any person for his or her own use for gainful purpose
8 or by any concessionaire for such use for gainful purpose, whether by
9 ownership, lease, sublease, profit-sharing arrangement or otherwise.

10 e. The words "rental value" mean the amount of the consideration annu-
11 ally fixed or charged against any person for the occupation of any prem-
12 ises during the period of one year commencing on July sixteenth of the
13 year prior to the year in which the tax is due and terminating on July
14 fifteenth of the year in which the tax is due, or if computed on a basis
15 other than an annual basis, then the amount which would be equivalent to
16 an annual charge for the occupation of the premises.

17 f. The words "non-federal project" shall mean a project not aided or
18 financed in whole or in part by the federal government and where such
19 government does not reserve the right to approve or supervise the
20 construction or operation of the project.

21 g. The words "vending machine" mean a machine which vends or sells
22 tangible personal property; and shall also include but not be limited to
23 amusement devices, automatic sanitary facilities and all other machines
24 vending services.

25 § 11-1005 Imposition of the tax. a. To provide additional funds for
26 the purpose of fulfilling any contract to make capital or periodic
27 subsidies to the city housing authority in aid of a low rent or slum
28 clearance project or for the purpose of paying an indebtedness incurred
29 for a low rent or slum clearance project, every occupant of premises for
30 a year or any part thereof in excess of one month and fifteen days shall
31 pay annually to the commissioner of finance on June twentieth of each
32 year until and including June twentieth, nineteen hundred eighty-one, a
33 tax for each separate premises occupied at the rates computed, with
34 reference to the rental value for separate premises in the city of
35 Staten Island, as specified in the following table:

36 =====

37 When the rental	And not	The amount of
38 value is at least	more than	the tax shall be
40 \$1.00.....	\$1,000.99	\$2.00
41 1,001.00.....	2,000.99	4.00
42 2,001.00.....	3,000.99	6.00
43 3,001.00.....	4,000.99	8.00
44 4,001.00.....	5,000.99	10.00
45 5,001.00 and over.....		12.00

46 =====

47 b. Where the premises are occupied by vending machines which sell
48 tangible personal property the tax shall be computed as specified in the
49 following table:

50 =====

51 When the total value of the	The amount of
52 coins used in such vending	the tax shall be
53 machines is	
54	
55 \$.01.....	\$.20
56 .02 to .14 incl.....	.40

1	.15 to .24 incl.....	1.00
2	.25 and over.....	2.00

3 =====
4 c. Where the premises are occupied by vending machines other than
5 those which sell tangible personal property the tax shall be computed as
6 specified in the following table:

7	=====	
8	When the total value of the	
9	coins used in such vending	The amount of
10	machines is	the tax shall be
11	-----	
12	\$.01.....	\$.40
13	.02 and over.....	2.00
14	=====	

15 § 11-1006 Exemptions. No tax as imposed by section 11-1005 of this
16 chapter shall be due or payable in any event for the occupation of any
17 of the premises described in this section to the extent so occupied and
18 no return need be made therefor pursuant to the provisions of this chap-
19 ter if any of the following conditions be demonstrated to the satisfac-
20 tion of the commissioner of finance:

- 21 1. That the premises are occupied by:
 - 22 (a) Peddlers.
 - 23 (b) Bootblacks, excluding shoe shine machines or enterprises where
24 services other than the shining of shoes are rendered.
 - 25 (c) Operators of pushcarts.
 - 26 (d) Operators of kiosk or subway stands engaged solely and exclusively
27 in the sale of newspapers, magazines and periodicals, or any combination
28 thereof.
 - 29 (e) Operators of stoop line stands licensed pursuant to chapter two of
30 title twenty of the code of the preceding municipality.
 - 31 (f) Operators of newspaper stands licensed pursuant to chapter two of
32 title twenty of the code of the preceding municipality.
- 33 2. That the premises are occupied for a period of less than one month
34 and fifteen days during the period of one year preceding July fifteenth
35 of the year in which the tax is due.
- 36 3. That the premises are occupied by a co-operative corporation organ-
37 ized under the provisions of the cooperative corporations law of the
38 state of New York, or an agricultural co-operative organized under the
39 authority of the federal government.
- 40 4. That the premises are occupied by the state of New York, or any
41 public corporation, including a public corporation created pursuant to
42 agreement or compact with another state or the dominion of Canada,
43 improvement district or other political subdivision of the state where
44 it is the purchaser, user or consumer.
- 45 5. That the premises are occupied by the United Nations or other
46 world-wide international organizations of which the United States of
47 America is a member.
- 48 6. That the premises are occupied by a corporation, or association, or
49 trust, or community chest, fund or foundation, organized and operated
50 exclusively for religious, charitable, or educational purposes, or for
51 the prevention of cruelty to children or animals, no part of the net
52 earnings of which inures to the benefit of any private shareholder or
53 individual, and no substantial part of the activities of which is carry-
54 ing on propaganda, or otherwise attempting to influence legislation;
55 provided, however, that nothing in this subdivision shall include an
56 organization operated for the primary purpose of carrying on a trade or

1 business for profit, whether or not all of its profits are payable to
2 one or more organizations described in this subdivision.

3 7. That the premises are occupied by the United States of America
4 under circumstances which make the premises immune from taxation.

5 § 11-1007 Returns; payment of taxes. On or before the twentieth day
6 of June in each year, every person subject to a tax hereunder, shall
7 file a return with the commissioner of finance on the form to be
8 furnished by the commissioner of finance. At the time of filing such
9 return each person shall pay to the commissioner of finance the tax
10 imposed pursuant to this chapter. Such tax shall be due and payable
11 annually upon the twentieth day of June, whether or not a return is
12 filed.

13 § 11-1008 Presumption and burden of proof. It shall be presumed that
14 the occupant of any premises is subject to the tax until the contrary is
15 established, and the burden of proving that any occupation of premises
16 is exempt from taxation shall be upon such occupant.

17 § 11-1009 Determination of tax by the commissioner of finance. a. If
18 a return required by this chapter is not filed, or if a return when
19 filed is incorrect or insufficient and the maker fails to file a
20 corrected or sufficient return within twenty days after it is required
21 by a notice from the commissioner of finance, the commissioner of
22 finance shall tentatively determine the amount of tax due from such
23 information as he or she may be able to obtain and, if necessary, may
24 estimate the tax on the basis of external indices. The commissioner of
25 finance shall give notice of the amount so fixed to the person liable
26 for the tax. Unless the person against whom the tax is assessed shall
27 within fifteen days after the giving of such notice apply in writing to
28 the commissioner of finance for a hearing to correct such assessment,
29 such notice shall constitute a final and irrevocable determination of
30 the tax. After such hearing the commissioner of finance shall give
31 notice of his or her decision to the person liable for the tax.

32 b. Such determination and the decision of the commissioner of finance
33 upon any application to correct may be reviewed for error, illegality or
34 unconstitutionality or for any reason whatsoever by a proceeding under
35 article seventy-eight of the civil practice law and rules in the nature
36 of a certiorari proceeding if application therefor is made to the
37 supreme court within thirty days after the giving of notice thereof.
38 Whenever under this chapter a proceeding to review is instituted, it
39 shall not be allowed unless the amount of any tax sought to be reviewed,
40 with penalties thereon, if any, shall be first deposited with the
41 commissioner of finance, and an undertaking filed with the commissioner
42 of finance, in such amount and with such sureties as a justice of the
43 supreme court shall approve, to the effect that if such proceeding be
44 dismissed or the tax confirmed, such person will pay all costs and
45 charges which may accrue in the prosecution of such proceeding.

46 § 11-1010 Refunds. The commissioner of finance shall refund any tax
47 erroneously, illegally or unconstitutionally collected by or paid to him
48 or her, under protest in writing, stating in detail the ground or
49 grounds of the protest, if application therefor shall be made to the
50 commissioner of finance within one year from the payment thereof. For
51 like cause and within the same period a refund may be made on the initi-
52 ative of the commissioner of finance. Whenever a refund is made the
53 commissioner of finance shall state his or her reasons therefor in writ-
54 ing. A person shall not be entitled to a hearing in connection with any
55 application for a refund if he or she has already been given the oppor-
56 tunity of a hearing as provided in section 11-1009 of this chapter. No

1 refund shall be made of a tax or penalty paid pursuant to a determi-
2 nation of the commissioner of finance as provided in section 11-1009 of
3 this chapter, unless the commissioner of finance, after a hearing as in
4 said section provided, or of his or her own motion, shall have reduced
5 the tax or penalty, or it shall have been established in a proceeding
6 under article seventy-eight of the civil practice law and rules that
7 such determination was erroneous, illegal, unconstitutional, or other-
8 wise improper, in which event a refund with interest shall be made as
9 provided upon the determination of such proceeding. An application for
10 a refund made as provided in this chapter shall be deemed an application
11 for a revision of any tax or penalty complained of and the commissioner
12 of finance may receive evidence with respect thereto. After making his
13 or her determination the commissioner of finance shall give notice ther-
14 eof to the person interested who shall be entitled to review such deter-
15 mination by a proceeding under article seventy-eight of the civil prac-
16 tice law and rules if application to the supreme court be made therefor
17 within thirty days after such determination and an undertaking shall
18 first be filed with the commissioner of finance in such amount and with
19 such sureties as a justice of the supreme court shall approve, to the
20 effect that if such order be dismissed or the tax confirmed, the appli-
21 cant for the order will pay all costs and charges which may accrue in
22 the prosecution of the certiorari proceeding.

23 § 11-1011 Remedies exclusive. The remedies provided by section
24 11-1009 of this chapter shall be the exclusive remedies available to any
25 person for the review of tax liability imposed by this chapter; and no
26 determination of tax or determination on an application for refund shall
27 be enjoined or reviewed by an action for declaratory judgment, an action
28 for money had and received or by any legal or equitable action or
29 proceeding other than one under article seventy-eight of the civil prac-
30 tice law and rules.

31 § 11-1012 Reserves. In cases where the taxpayer has paid any tax
32 under written protest stating in detail the ground or grounds therefor,
33 or has applied for a refund and an order under article seventy-eight of
34 the civil practice law and rules to review a determination adverse to
35 the taxpayer on the taxpayer's application for refund, or has deposited
36 the amount of tax assessed in connection with a proceeding under section
37 11-1009 of this chapter the commissioner of finance shall set up appro-
38 priate reserves to meet any decision adverse to the city.

39 § 11-1013 Proceeding to recover tax. a. The commissioner of finance
40 may issue a warrant directed to any officer or employee of the depart-
41 ment of finance commanding him or her to levy upon and sell the real and
42 personal property of the person from whom the tax is due for the payment
43 of the amount thereof, with penalties, and the cost of executing the
44 warrants, and to return such warrant to the commissioner of finance and
45 to pay to him or her the money collected by virtue thereof, and in the
46 execution thereof such officer or employee shall have all the powers
47 conferred by law upon sheriffs, but he or she shall be entitled to no
48 fee or compensation in excess of the actual expenses paid in the
49 performance of such duty. If a warrant is returned not satisfied in
50 full, the commissioner of finance may from time to time issue new
51 warrants and shall also have the same remedies to enforce the amount due
52 pursuant to this section as if the city had recovered judgment therefor
53 and the execution thereon had been returned not satisfied. A copy of
54 any warrant issued may be filed with the county clerk in Richmond county
55 and thereupon such clerk shall enter in the judgment docket the name of
56 the person mentioned in the warrant and the amount of the tax and penal-

1 ty for which the warrant is issued and the date when such copy is filed.
2 Thereupon the amount of such warrant so docketed shall become a lien
3 upon the title to and interest in the real and personal property of the
4 person against whom the warrant is issued.

5 b. As an additional or alternate remedy the commissioner of finance
6 may request the corporation counsel to bring an action in the name of
7 the city to enforce payment of a tax or penalty which any person has
8 failed to pay.

9 c. The commissioner of finance, if he or she finds that the interests
10 of the city will not thereby be jeopardized, and upon such conditions as
11 the commissioner of finance may require, may release any property from
12 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
13 tions to tax, penalties and interest filed pursuant to subdivision a of
14 this section, and such release or vacating of the warrant may be
15 recorded in the office of any recording officer in which such warrant
16 has been filed. The clerk shall thereupon cancel and discharge as of the
17 original date of docketing the vacated warrant.

18 § 11-1014 Notices and limitation of time. a. Any notice authorized or
19 required under the provisions of this chapter may be given by mailing
20 the same to the person for whom it is intended in a post paid envelope
21 addressed to such person at the address given in the return filed by
22 such person pursuant to the provisions of this chapter or if no return
23 has been filed then to such address as may be obtainable. The mailing
24 of such notice shall be presumptive evidence of the receipt of the same
25 by the person to whom addressed. Any period of time which is determined
26 according to the provisions of this chapter by the giving of notice
27 shall commence to run from the date of mailing of such notice.

28 b. The provisions of the civil practice law and rules relative to
29 limitations of time for the enforcement of a civil remedy shall not
30 apply to any proceeding or action by the city taken to levy, appraise,
31 assess, determine or enforce the collection of any tax or penalty
32 provided by this chapter.

33 § 11-1015 Penalties and interest. a. Any person failing to file a
34 return or corrected return or to pay any tax or any portion thereof that
35 may be required by this chapter shall be subject to a penalty of five
36 times the amount of the tax due, plus five per centum of such tax for
37 each month of delay or fraction thereof, but the commissioner of
38 finance, if satisfied that the delay was excusable, may remit all or any
39 part of such penalty, but not interest. Penalties shall be paid to the
40 commissioner of finance and disposed of in the manner as other receipts
41 under this chapter. Unpaid penalties may be enforced in the same manner
42 as the tax imposed by this chapter.

43 b. Any person filing or causing to be filed any return, certificate,
44 affidavit or statement required or authorized by this chapter, which is
45 wilfully false and any person who shall fail to file a return or to
46 furnish a statement or other information as required under this chapter,
47 shall be guilty of a misdemeanor, punishment for which shall be a fine
48 of not more than one thousand dollars or imprisonment for not more than
49 one year, or both such fine and imprisonment.

50 A certificate of the commissioner of finance to the effect that a tax
51 has not been paid, that a return has not been filed, or that information
52 has not been supplied pursuant to the provisions of this chapter, shall
53 be prima facie evidence thereof.

54 § 11-1016 General powers of the commissioner of finance. In the
55 administration of this chapter, the commissioner of finance is author-
56 ized to:

1 1. Make and publish reasonable rules and regulations as may be neces-
2 sary for the exercise of the commissioner's powers and the performance
3 of the commissioner's duties under this chapter.

4 2. Assess the tax authorized to be imposed under this chapter.

5 3. Subpoena and require the attendance of witnesses and the production
6 of books, papers and other documents, and to take testimony and proofs,
7 under oath, with reference to any matter within the line of the commis-
8 sioner's official duty under this chapter.

9 4. Delegate the commissioner's functions hereunder to a deputy commis-
10 sioner of finance or other employee or employees of the department of
11 finance.

12 5. Prescribe methods for determining the rental values of premises,
13 the occupant of which is taxable pursuant to the provisions of this
14 chapter.

15 6. Require any person who receives or is entitled to receive a consid-
16 eration for the occupation of premises to furnish a statement to the
17 commissioner of finance, upon his or her request, containing information
18 as to the name of each occupant and rental value of each for the occupa-
19 tion of such premises.

20 7. Nothing contained in section 11-1017 of this chapter or in any
21 other provision of this chapter shall be construed to limit the authori-
22 ty of the commissioner of finance, hereby authorized, to furnish any
23 information, whether or not contained in a return, to the tax commission
24 or any other agency or department of the state of New York, or to the
25 treasury department of the United States, or to any agency of the city
26 of Staten Island, or to the district attorney of Richmond county.

27 8. To extend, for cause shown, the time for filing any return for a
28 period not exceeding twenty days.

29 § 11-1017 Returns to be secret. Except in accordance with judicial
30 order, or upon subpoena issued by a court of competent jurisdiction, it
31 shall be unlawful for the commissioner of finance or any officer or
32 employee of the city to divulge or make known in any manner, any infor-
33 mation contained in any return required under this chapter. Nothing in
34 this section shall be construed to prohibit the delivery to a taxpayer
35 of a certified copy of any return filed by the taxpayer, nor to prohibit
36 the publication of statistics so classified as to prevent the identifi-
37 cation of particular returns, or the inspection by the corporation coun-
38 sel of the return to any taxpayer who shall bring action or proceeding
39 to set aside or review the tax based thereon, or against whom an action
40 or proceeding has been instituted or is contemplated for the collection
41 of a tax or penalty. Returns shall be preserved for three years and
42 thereafter until the commissioner of finance orders them to be
43 destroyed.

44 § 11-1018 Disposition of revenue. All revenues and moneys heretofore
45 or hereafter collected resulting from the imposition of taxes and penal-
46 ties imposed by this chapter shall be deposited in the city treasury,
47 and credited to a separate account. During each fiscal year, an amount
48 not in excess of the amount of the subsidies to be made, and the amount
49 of indebtedness incurred for low rent or slum clearance projects to be
50 paid, during such fiscal year shall be charged to such account and cred-
51 ited to the general fund. No other payments shall be charged to such an
52 account. The mayor may contract to make capital or periodic subsidies
53 to the city housing authority in aid of a low rent project, or may incur
54 indebtedness for a low rent slum clearance project, but such periodic
55 subsidies shall not be contracted for a period longer than the life of
56 such project and in no event for more than fifty years. If the amount

1 of any such periodic subsidy shall be equal to or greater than the
2 interest on and the amounts required annually for the payment of the
3 indebtedness contracted by the authority on account of such project in
4 each year, such contract shall constitute a guarantee of the principal
5 of and the interest on such indebtedness, and such contract and the
6 payments thereunder may be pledged by the authority as security in addi-
7 tion to all other security which the authority may give for such bonds.
8 No such contract or periodic subsidies shall be made until the plan for
9 such project shall have been approved in the manner provided by the
10 public housing law.

11 § 11-1019 Application; construction. If any provision of this chapter
12 shall be adjudged by any court of competent jurisdiction to be invalid,
13 such judgment shall not affect, impair or invalidate the remainder ther-
14 eof, but shall be confined in its operation to the provision directly
15 involved in the controversy in which such judgment shall have been
16 rendered. This chapter shall be construed in conformity with the public
17 housing law.

18 CHAPTER 11

19 UTILITY TAX

20 § 11-1101 Definitions. When used in this chapter the following terms
21 shall mean or include:

22 1. "Person." Includes any individual, partnership, society, associ-
23 ation, joint-stock company, corporation, estate, receiver, lessee, trus-
24 tee, assignee, assignee of rents, referee, or any other person acting in
25 a fiduciary or representative capacity, whether appointed by a court or
26 otherwise, and any combination of individuals.

27 2. "Comptroller." The comptroller of the city.

28 3. "Commissioner of finance." The commissioner of finance of the
29 city.

30 4. "Gross income." All receipts received in or by reason of any sale
31 made including receipts from the sale of residuals and by-products,
32 except sale of real property, or service rendered in the city, including
33 cash, credits and property of any kind or nature, whether or not such
34 sale is made or such service is rendered for profit, without any
35 deduction therefrom on account of the cost of the property sold, the
36 cost of material used, labor or services, delivery costs, any other
37 costs whatsoever, interest or discount paid, or any other expense what-
38 soever; also profits from the sale of securities; also profits from the
39 sale of real property growing out of the ownership or use of or interest
40 in such property; also profit from the sale of personal property, other
41 than property of a kind which would properly be included in the invento-
42 ry of the taxpayer if on hand at the close of the taxable period for
43 which a return is made; also receipts from interest, dividends and
44 royalties without any deductions therefrom for any expense whatsoever
45 incurred in connection with the receipt thereof, and also gains or
46 profits from any source whatsoever; but shall not include gross income
47 of railroads from the transportation of freight, gross income from the
48 operation of hotels, multiple dwellings or office buildings by persons
49 in the business of operating or leasing sleeping or parlor railroad cars
50 or of operating railroads other than street surface, rapid transit,
51 subway and elevated railroads, or interest or dividends received from a
52 corporation by such persons or by persons subject to taxation under the
53 provisions of section one hundred eighty-six-a of the tax law. Rents or
54 rentals shall not be deemed to be gross receipts subject to tax, except
55 rents or rentals derived from facilities used in the public service;

1 provided, however, that in the case of persons in the business of oper-
2 ating or leasing sleeping or parlor railroad cars or of operating rail-
3 roads other than street surface, rapid transit, subways and elevated
4 railroads, such last-mentioned rents or rentals derived from other such
5 utilities with respect to the operation of terminal facilities shall not
6 be deemed to be gross income subject to tax except for the amount in
7 excess of a user proportion of New York city real property and special
8 franchise taxes and expenses of maintenance and operation. Notwithstand-
9 ing anything to the contrary in this subdivision or any other provision
10 of law, for taxable periods beginning on or after August first, two
11 thousand two, gross income shall include eighty-four percent of charges
12 for the provision of mobile telecommunications services where the place
13 of primary use of the mobile telecommunications services is within the
14 territorial limits of the city except to the extent that such inclusion
15 would result in the taxation of charges for the provision of mobile
16 telecommunications services that is prohibited by federal law.

17 5. "Gross operating income." Includes receipts received in or by
18 reason of any sale made or service rendered, of the property and
19 services specified in subdivision seven of this section in the city,
20 including cash, credits and property of any kind or nature, whether or
21 not such sale is made or such service is rendered for profit, without
22 any deduction therefrom on account of the cost of the property sold, the
23 cost of materials used, labor or other services, delivery costs or any
24 other costs whatsoever, interest or discount paid or any other expenses
25 whatsoever, provided however, that if a vendor of utility service
26 purchases gas, electricity, steam, water or refrigeration or gas, elec-
27 tric, steam, water or refrigeration service in a transaction the
28 receipts from which are not subject to the tax imposed under this chap-
29 ter, the gross operating income derived by such vendor of utility
30 service from the resale of such gas, electricity, steam, water or
31 refrigeration or such gas, electric, steam, water or refrigeration
32 service to its tenants as an incident to such vendor's activity of rent-
33 ing premises to tenants, shall, if subject to the tax imposed under this
34 chapter on such vendor, be conclusively presumed to be equal to the
35 amount of such vendor's cost, including any associated transportation
36 cost, for the purchase of such gas, electricity, steam, water or refrig-
37 eration or gas, electric, steam, water or refrigeration service for
38 resale by such vendor. Notwithstanding anything to the contrary in this
39 subdivision or any other provision of law, for taxable periods beginning
40 on or after August first, two thousand two, gross operating income shall
41 include eighty-four percent of charges for the provision of mobile tele-
42 communications services where the place of primary use of the mobile
43 telecommunications services is within the territorial limits of the city
44 except to the extent that such inclusion would result in the taxation of
45 charges for the provision of mobile telecommunications services that is
46 prohibited by federal law.

47 6. "Utility." Every person subject to the supervision of the depart-
48 ment of public service and, for taxable periods beginning on or after
49 August first, two thousand two, every person, whether or not supervised
50 by the department of public service, eighty percent or more of the gross
51 receipts of which consists of charges for the provision of mobile tele-
52 communications services to customers. Notwithstanding anything to the
53 contrary in any other provision of law, for purposes of this subdivi-
54 sion, the gross receipts of a person shall not include the gross
55 receipts of any other related or unrelated person.

1 7. "Vendor of utility services." Every person not subject to the
2 supervision of the department of public service, and not otherwise a
3 utility as defined in subdivision six of this section, who furnishes or
4 sells gas, electricity, steam, water or refrigeration, or furnishes or
5 sells gas, electric, steam, water, refrigeration or telecommunications
6 services, or who operates omnibuses, whether or not such operation is on
7 the public streets; regardless of whether such furnishing, selling or
8 operation constitutes the main activity of such person or is merely
9 incidental thereto.

10 8. "Return." Includes any return filed or required to be filed as
11 provided under this chapter.

12 9. "Telecommunications services." Telephony or telegraphy, or tele-
13 phone or telegraph service, including, but not limited to, any trans-
14 mission of voice image, data, information and paging, through the use of
15 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
16 similar media or any combination thereof and shall include services that
17 are ancillary to the provision of telephone service, such as, but not
18 limited to, dial tone, basic service, directory information, call
19 forwarding, caller-identification, call waiting and the like, and also
20 include any equipment and services provided therewith; provided, howev-
21 er, that the definition of telecommunication services shall not apply to
22 separately stated charges for any service that alters the substantive
23 content of the message received by the recipient from that sent; and
24 that such services shall not include (i) cable television services that
25 consist of the transmitting to subscribers of programs broadcast by one
26 or more television or radio stations or any other programs originated by
27 any person by means of wire, cable, microwave or any other means or (ii)
28 air safety and navigation services where such telecommunication service
29 is provided by an organization, at least ninety percent of which, if a
30 corporation, ninety percent of the voting stock of which, is owned,
31 directly or indirectly, by air carriers, and which organization's prin-
32 cipal function is to fulfill the requirements of (a) the federal
33 aviation administration, or the successor thereto, or (b) the interna-
34 tional civil aviation organization, or the successor thereto, relating
35 to the existence of a communication system between aircraft and
36 dispatcher, aircraft and air traffic control or ground station and
37 ground station, or any combination of such, for the purposes of air
38 safety and navigation.

39 10. "Limited fare omnibus company." An omnibus company whose principal
40 source of revenue is derived from the daily transportation of passengers
41 wholly within the city on a route or zoned portion thereof pursuant to a
42 franchise agreement with, or consent of, the city, at the following
43 fares: for the period from August first, nineteen hundred sixty-five
44 until and including December thirty-first, nineteen hundred seventy-
45 five, at a fare not in excess of thirty-five cents per passenger; for
46 the period from January first, nineteen hundred seventy-six until and
47 including June twenty-seventh, nineteen hundred eighty, at a fare not in
48 excess of fifty cents per passenger; for the period from June twenty-
49 eighth, nineteen hundred eighty until and including August thirty-first,
50 nineteen hundred eighty, at a fare not in excess of sixty cents per
51 passenger; for the period from September first, nineteen hundred eighty
52 and thereafter, at a fare not in excess of the regular rate of fare
53 charged per passenger for comparable service both local and express on
54 regular rapid transit and surface lines operated by the New York city
55 transit authority. For purposes of this subdivision, the term "regular
56 rate of fare" shall be exclusive of fares for special train or bus

- 1 service, or additional charges for bridge or tunnel tolls or transfer
2 privileges.
- 3 11. "Commuter service." Mass transportation service, exclusive of
4 limited stop service to airports, racetracks or any place where enter-
5 tainment, amusement or sport activities are held or where recreational
6 facilities are supplied, provided pursuant to a franchise with, or
7 consent of, the city of New York.
- 8 12. "Tax appeals tribunal." The tax appeals tribunal established by
9 section one hundred sixty-eight of the charter of the preceding munici-
10 pality.
- 11 13. "Base Year." Means the calendar year ending immediately prior to
12 the calendar year containing the taxable period or periods for which a
13 return is required to be filed pursuant to the provisions of section
14 11-1104 of this chapter.
- 15 14. "Taxable Period." Means the period for which a return is required
16 to be filed pursuant to the provisions of this chapter and shall be
17 either (i) the semiannual period beginning the first day of January or
18 the first day of July of the calendar year, or (ii) the calendar month.
- 19 15. "Premises." Means for purposes of section 11-1102 of this chapter,
20 any real property or part thereof, and any structure thereon or space
21 therein.
- 22 16. "Tenant." Means a person paying, or required to pay, rent for
23 premises as a lessee, sublessee, licensee or concessionaire.
- 24 17. "Mobile telecommunications services." Telecommunications services
25 that are commercial mobile radio services.
- 26 18. "Commercial mobile radio services." Commercial mobile radio
27 services as defined in section 20.3 of title forty-seven of the Code of
28 Federal Regulations as in effect on June first, nineteen hundred nine-
29 ty-nine.
- 30 19. "Charges for mobile telecommunications services." Any charge for,
31 or associated with, the provision of mobile telecommunications services
32 and any charge for, or associated with, a service provided as an adjunct
33 to mobile telecommunications services that is billed to the customer by
34 or for the customer's home service provider regardless of whether indi-
35 vidual transmissions originate or terminate within the licensed service
36 area of the home service provider.
- 37 20. "Place of primary use." The street address representative of where
38 the customer's use of the mobile telecommunications services primarily
39 occurs, which must be (i) the residential street address or the primary
40 business street address of the customer; and (ii) within the licensed
41 service area of the home service provider.
- 42 21. "Licensed service area." The geographic area in which the home
43 service provider is authorized by law or contract to provide commercial
44 mobile radio services to the customer.
- 45 22. "Home service provider." The facilities-based carrier or reseller
46 with which the customer contracts for the provision of mobile telecommu-
47 nications services.
- 48 23. "Customer." The person or entity that contracts with the home
49 service provider for mobile telecommunications services. If the end user
50 of mobile telecommunications services is not the contracting party,
51 then, solely for purposes of subdivision twenty of this section, the
52 term "customer" shall mean the end user of the mobile telecommunications
53 services. The term customer does not include a reseller of mobile tele-
54 communications services, or a serving carrier under an arrangement to
55 serve the customer outside the home service provider's licensed service
56 area.

1 24. "Reseller." A provider who purchases telecommunications services
2 from another telecommunications service provider and then resells, uses
3 as a component part of, or integrates the purchased services into a
4 mobile telecommunications service. The term reseller does not include a
5 serving carrier with which a home service provider arranges for the
6 services to its customers outside the home service provider's licensed
7 service area.

8 25. "Serving carrier." A facilities-based carrier providing mobile
9 telecommunications service to a customer outside a home service provid-
10 er's or reseller's licensed service area.

11 26. "Cogeneration facility" means (i) a facility that was in operation
12 before January first, two thousand four and that produces electric ener-
13 gy and steam or other forms of useful energy, such thermal energy, that
14 are supplied to and used by tenants and/or occupants of a cooperative
15 corporation for industrial, commercial, or residential heating or cool-
16 ing purposes; or (ii) a cogeneration facility, as defined in clause (i)
17 of this subparagraph, that has been replaced by any other facility used
18 to generate electricity and steam or other forms of useful energy, such
19 as thermal energy, when such electricity and steam or other forms of
20 useful energy, such as thermal energy, are supplied to and used by
21 tenants and/or occupants of a cooperative corporation.

22 27. "Enhanced zip code." A United States postal zip code of nine or
23 more digits.

24 28. "Cooperative corporation" means a corporation organized under the
25 laws of New York, at least some of the stockholders of which are enti-
26 tled, by reason of the stockholders' ownership interest of stock in the
27 corporation, to occupy for dwelling purposes an apartment in a building
28 owned by the corporation pursuant to a lease or occupancy agreement with
29 the corporation.

30 § 11-1102 Imposition of excise tax. a. Notwithstanding any other
31 provisions of law to the contrary, for the privilege of exercising its
32 franchise or franchises, or of holding property, or of doing business in
33 the city, on or after August first, nineteen hundred sixty-five, every
34 utility shall pay to the commissioner of finance an excise tax which
35 shall be equal to two per centum of its gross income until and including
36 December thirty-first, nineteen hundred sixty-five, and shall be equal
37 to two and thirty-five hundredths per centum thereafter, except that the
38 rate as to persons engaged in the business of operating omnibuses with a
39 carrying capacity of more than seven persons shall be one per centum
40 until and including December thirty-first, nineteen hundred sixty-five,
41 and one and seventeen hundredths per centum thereafter, and except that
42 as to persons engaged in the business of operating or leasing sleeping
43 and parlor railroad cars or of operating railroads other than street
44 surface, rapid transit, subway and elevated railroads, the rate shall be
45 three per centum until and including December thirty-first, nineteen
46 hundred sixty-five, and three and fifty-two one hundredths per centum
47 thereafter, and every vendor of utility services in the city shall pay
48 to the commissioner of finance an excise tax which shall be equal to two
49 per centum of its gross operating income until and including December
50 thirty-first, nineteen hundred sixty-five, and shall be equal to two and
51 thirty-five one hundredths per centum thereafter, except that as to
52 persons engaged in the business of operating omnibuses with a carrying
53 capacity of more than seven persons other than omnibuses used exclu-
54 sively for the transportation of children to and from schools operated
55 under contracts made pursuant to the provisions of the education law,
56 and not subject to the jurisdiction of the department of public service,

1 the rate shall be one per centum of its gross operating income until and
2 including December thirty-first, nineteen hundred sixty-five, and one
3 and seventeen hundredths per centum thereafter. Such tax shall be in
4 addition to any and all other taxes, charges and fees imposed by any
5 other provision of law and shall be paid at the time and in the manner
6 provided in this section, but any person to the extent that it is
7 subject to tax pursuant to this section shall not be liable to any tax
8 under any other of the local laws of the preceding municipality as it
9 existed January first, nineteen hundred ninety-four enacted pursuant to
10 chapter ninety-three of the laws of nineteen hundred sixty-five as
11 amended, or the former article two-b of the general city law, with
12 respect to its gross income or gross operating income taxed pursuant to
13 this section, as the case may be.

14 b. So much of the gross income of a utility shall be excluded from the
15 measure of the tax imposed by this chapter, as is derived from sales for
16 resale to vendors of utility services validly subject to the tax imposed
17 by this chapter, except to the extent that such gross income is derived
18 from sales of gas, electricity, steam, water or refrigeration or sales
19 or rendering of gas, electric, steam, water or refrigeration service to
20 a vendor of utility services for resale to its tenants as an incident to
21 such vendor's activity of renting premises to tenants.

22 c. For the purpose of proper administration of this chapter and to
23 prevent evasion of the tax imposed by this section, it shall be presumed
24 that the gross income or gross operating income of any person taxable
25 pursuant to this section is taxable and is derived from business
26 conducted wholly within the territorial limits of the city until the
27 contrary is established, and the burden of proving that any part of its
28 gross income or gross operating income is not so derived shall be upon
29 such person. Notwithstanding anything to the contrary in this subdivi-
30 sion or in any provision of section twenty-b of the general city law or
31 any other provision of law, for taxable periods beginning on or after
32 August first, two thousand two, gross income and gross operating income
33 derived from the provision of mobile telecommunications services shall
34 be deemed to be derived from business conducted wholly within the terri-
35 torial limits of the city where the place of primary use of the mobile
36 telecommunications services is within the territorial limits of the
37 city.

38 d. The tax imposed by this chapter shall be inapplicable to the gross
39 income received by a limited fare omnibus company until and including
40 August thirty-first, nineteen hundred eighty. Thereafter, such tax shall
41 be applicable to such gross income received as follows: (1) for gross
42 income received from commuter service from September first, nineteen
43 hundred eighty until and including December thirty-first, nineteen
44 hundred eighty-three, the rate of tax shall be one hundredth of one per
45 centum; (2) for gross income received from commuter service from January
46 first, nineteen hundred eighty-four and thereafter, the rate of tax
47 shall be one tenth of one per centum; and (3) for gross income received
48 from all other sources, the rate of tax shall be as provided in subdivi-
49 sion a of this section.

50 e. The gross operating income of a vendor of utility services derived
51 from sales to its tenants of gas, electricity, steam, water, or refrig-
52 eration or sales or rendering to its tenants of gas, electric, steam,
53 water or refrigeration service, as an incident to such vendor's activity
54 of renting premises to tenants, shall be excluded from the measure of
55 the tax imposed by this chapter, but, with regard to sales to its
56 tenants of gas, electricity, or steam or sales or rendering to its

1 tenants of gas, electric or steam service, only to the extent that the
2 tax imposed by this chapter has been validly paid or accrued with
3 respect to a prior sale of such gas, electricity or steam or sale or
4 rendering of gas, electric or steam service.

5 f. (1) Notwithstanding anything contained in this chapter to the
6 contrary, for taxable periods beginning on or after August first, two
7 thousand two, if a partnership is subject to the tax imposed by this
8 chapter as a utility or as a vendor of utility services, no person who
9 is a partner in such a partnership shall be subject to the tax imposed
10 by this chapter on such partner's distributive share of the gross income
11 or gross operating income of such partnership.

12 (2) If a person is a partner in a partnership subject to the tax
13 imposed by this chapter and that person is separately subject to the
14 supervision of the state department of public service or is a utility or
15 a vendor of utility services based on its activities exclusive of any
16 activities of such partnership, for taxable periods beginning on or
17 after August first, two thousand two, such person shall be subject to
18 the tax imposed by this chapter only on its separate gross income or
19 separate gross operating income, which shall not include such person's
20 distributive share of the gross income or gross operating income of such
21 partnership.

22 (3) For purposes of this subdivision, the term "partner" shall include
23 a person who receives a distributive share of the gross income or gross
24 operating income, directly or indirectly through one or more tiers of
25 partnerships, of a partnership subject to the tax imposed by this chap-
26 ter.

27 g. Notwithstanding anything else contained in this chapter to the
28 contrary, for the taxable periods beginning on or after January first,
29 two thousand six, if a cooperative corporation containing at least
30 fifteen hundred apartments furnishes or sells electricity, steam,
31 refrigeration or water, or furnishes or sells electric, steam, refriger-
32 ation or water services that are (i) metered, (ii) generated or produced
33 by a cogeneration facility owned or operated by such cooperative corpo-
34 ration, and (iii) such electricity, steam, refrigeration or water and/or
35 electric, steam, refrigeration or water services are distributed to
36 tenants and/or occupants of a cooperative corporation, then such cooper-
37 ative corporation shall pay to the commissioner of finance an excise tax
38 which shall be equal to zero per centum of its gross income or its gross
39 operating income, as the case may be.

40 § 11-1103 Records to be kept. Every person subject to tax pursuant to
41 this chapter shall keep records of its business and in such form as the
42 commissioner of finance may by regulation require. Such records shall
43 be offered for inspection and examination at any time upon demand by
44 such commissioner or his or her duly authorized agent or employee and
45 shall be preserved for a period of three years, except that the commis-
46 sioner of finance may consent to their destruction within that period or
47 may require that they be kept longer.

48 § 11-1104 Returns; requirements as to. a. Except as otherwise
49 provided in subdivision e of this section with respect to taxable peri-
50 ods beginning after nineteen hundred ninety-eight, on or before the
51 twenty-fifth day of September, nineteen hundred sixty-five, and on or
52 before the twenty-fifth day of every month thereafter, every person
53 subject to tax pursuant to this chapter shall file a return with the
54 commissioner of finance on a form to be prescribed by such commissioner.
55 Such return shall state the gross income or gross operating income as
56 the case may be for the preceding calendar month, and shall contain any

1 other data, information or other matter which the commissioner of
2 finance may require to be included therein. The commissioner of finance
3 may require at any further time a supplemental return, which shall
4 contain any data upon such matters as such commissioner may specify.
5 Notwithstanding the provisions of this subdivision and notwithstanding
6 the provisions of subdivision e of this section, a vendor of utility
7 services, all of whose gross operating income is excluded from the meas-
8 ure of the tax imposed by this chapter pursuant to subdivision e of
9 section 11-1102 of this chapter during any taxable period, shall not be
10 required to file a return for such taxable period, provided, however,
11 that on or before the first day of September of each year, any such
12 vendor of utility services who was not required to file a return for any
13 taxable period during the period covered by the statement required to be
14 filed by such date pursuant to subdivision a of section 11-208.1 of this
15 title shall file an information return covering such period in such form
16 and containing such information as the commissioner of finance may spec-
17 ify.

18 b. The commissioner of finance may require amended returns to be filed
19 within twenty days after notice and to contain the information specified
20 in the notice.

21 c. If a return required by this chapter is not filed or if a return
22 when filed is incorrect or insufficient on its face, the commissioner of
23 finance shall take the necessary steps to enforce the filing of such
24 return or of a corrected return.

25 d. Where the state tax commission changes or corrects a taxpayer's
26 sales and compensating use tax liability with respect to the purchase or
27 use of items for which a sales or compensating use tax credit against
28 the tax imposed by this chapter was claimed, the taxpayer shall report
29 such change or correction to the commissioner of finance within ninety
30 days of the final determination of such change or correction, or as
31 required by the commissioner of finance, and shall concede the accuracy
32 of such determination or state wherein it is erroneous. Any taxpayer
33 filing an amended return or report with the state tax commission relat-
34 ing to the purchase or use of such items shall also file within ninety
35 days thereafter a copy of such amended return or report with the commis-
36 sioner of finance.

37 e. With respect to taxable periods beginning after nineteen hundred
38 ninety-eight, notwithstanding the provisions of subdivision a of this
39 section, if the amount of tax imposed pursuant to this section on any
40 person in the base year does not exceed one hundred thousand dollars,
41 the taxable period for which such person is required to file a return is
42 the semiannual period described in paragraph i of subdivision fourteen
43 of section 11-1101 of this chapter, and such person shall file a return
44 for each semiannual period of the first calendar year beginning after
45 the base year on or before the twenty-fifth day of the month following
46 the end of each such taxable period. Such return shall be filed with the
47 commissioner of finance on a form to be prescribed by such commissioner.

48 Such return shall state the gross income or gross operating income as
49 the case may be for the preceding taxable period and shall contain any
50 other data, information or other matter which the commissioner of
51 finance may require to be included therein. The commissioner of finance
52 may require at any further time a supplemental return, which shall
53 contain any data upon such matters as such commissioner may specify. For
54 the purposes of this subdivision, if the amount of tax imposed pursuant
55 to this chapter on such person in the base year is for a period of less
56 than one year, the amount of tax imposed on such person shall be annual-

1 ized by multiplying the amount of tax imposed by a fraction, the denomi-
2 nator of which is the number of months or parts thereof during which the
3 person was subject to the tax imposed pursuant to this chapter and the
4 numerator of which is twelve. Notwithstanding the provisions of this
5 subdivision, a person that first becomes subject to the tax pursuant to
6 this chapter shall file a return for each month in the calendar year in
7 which such person first becomes subject to such tax in accordance with
8 subdivision a of this section.

9 § 11-1105 Payment of tax; credit for certain sales and compensating
10 use taxes. a. At the time of filing each return, as provided under
11 section 11-1104 of this chapter, each person taxable pursuant to this
12 chapter shall pay to the commissioner of finance the taxes imposed by
13 this chapter upon its gross income or gross operating income, as the
14 case may be, for the taxable period covered by such return, less any
15 credit to which such person may be entitled under subdivision b of this
16 section. Such taxes shall be due and payable on the last day on which
17 the return for such period is required to be filed, regardless of wheth-
18 er a return is filed or whether the return which is filed correctly
19 indicates the amount of tax due.

20 b. (1) A taxpayer shall be allowed a credit against the taxes imposed
21 by this chapter for the amount of sales and compensating use taxes
22 imposed by section eleven hundred seven of the tax law which became
23 legally due on or after, and which were paid on or after, July first,
24 nineteen hundred seventy-seven but within the taxable period for which a
25 credit is claimed, with respect to the purchase or use by the taxpayer
26 of machinery or equipment for use or consumption directly and predomi-
27 nantly in the production of steam for sale, by manufacturing, process-
28 ing, generating, assembling, refining, mining or extracting, or tele-
29 phone central office equipment or station apparatus or comparable
30 telegraph equipment for use directly and predominantly in receiving at
31 destination or initiating and switching telephone or telegraph communi-
32 cation, but not including parts with a useful life of one year or less
33 or tools or supplies used in connection with such machinery, equipment
34 or apparatus.

35 (2) The amount of the credit provided in paragraph one of this subdi-
36 vision shall be limited to the amount of such sales and compensating use
37 taxes paid during the taxable period covered by the return under this
38 chapter on which the credit is taken less the amount of any credit or
39 refund of such sales and compensating use taxes during such taxable
40 period. If such credit exceeds the amount of tax under this chapter
41 payable for the taxable period in question, such excess amount shall be
42 refunded or credited except in the case of a vendor of utility services
43 who is entitled to a credit and/or refund for such sales and compensat-
44 ing use taxes under chapter five or six of this title. The credit
45 allowed under this subdivision shall be deemed an erroneous payment of
46 tax by the taxpayer to be credited or refunded in accordance with the
47 provisions of section 11-1108 of this chapter, except as otherwise
48 provided in this paragraph.

49 (3) Where the taxpayer receives a refund or credit of any tax imposed
50 under section eleven hundred seven of the tax law for which the taxpayer
51 has claimed a credit under the provisions of this subdivision in a prior
52 taxable period, the amount of such refund or credit shall be added to
53 the tax imposed by section 11-1102 of this chapter of the taxable period
54 in which such refund or credit of tax under section eleven hundred seven
55 of the tax law is received.

1 § 11-1105.1 Credit for rebates of charges for energy. A taxpayer shall
2 be allowed a credit against the amount of taxes imposed by this chapter
3 for the amount of special rebates and discounts made in accordance with
4 the provisions of section 22-602 of the code of the preceding municipi-
5 pality and for the amount of special rebates and discounts made in
6 accordance with the provisions of section twenty-five-bb of the general
7 city law. Such credit shall be applied against the amount of tax other-
8 wise required to be paid as provided in subdivision a of section 11-1105
9 of this chapter and shall be claimed for the taxable period immediately
10 succeeding the taxable period in which such rebates or discounts are
11 made.

12 § 11-1105.2 Relocation and employment assistance program credit. (a) A
13 taxpayer that has obtained the certifications required by chapter six-B
14 of title twenty-two of the code of the preceding municipality shall be
15 allowed a credit against the tax imposed by this chapter, provided,
16 however, that a taxpayer that is a vendor of utility services shall not
17 be allowed the credit against the tax imposed by this chapter unless it
18 elects as provided in subdivision (d) of section 22-622 of the code of
19 the preceding municipality to take the credit against the tax imposed by
20 this chapter. The amount of the credit shall be the amount determined by
21 multiplying one thousand dollars or, in the case of an eligible business
22 that has obtained pursuant to chapter six-B of such title twenty-two a
23 certification of eligibility dated on or after July first, two thousand,
24 for a relocation to eligible premises located within a revitalization
25 area defined in subdivision (n) of section 22-621 of the code of the
26 preceding municipality, three thousand dollars, by the number of eligi-
27 ble aggregate employment shares maintained by the taxpayer during the
28 calendar year with respect to particular premises to which the taxpayer
29 has relocated; provided, however, with respect to a relocation for which
30 no application for a certificate of eligibility is submitted prior to
31 July first, two thousand three, to eligible premises that are within a
32 revitalization area, if the date of such relocation as determined pursu-
33 ant to subdivision (j) of section 22-621 of the code of the preceding
34 municipality is on or after January first, nineteen hundred ninety-nine,
35 and before July first, two thousand, the amount to be multiplied by the
36 number of eligible aggregate employment shares shall be one thousand
37 dollars; provided, however, that no credit shall be allowed for the
38 relocation of any retail activity or hotel services; and provided that
39 in the case of an eligible business that has obtained pursuant to chap-
40 ter six-B of such title twenty-two certifications of eligibility for
41 more than one relocation, the portion of the total amount of eligible
42 aggregate employment shares to be multiplied by the dollar amount speci-
43 fied in this subdivision for each such certification of a relocation
44 shall be the number of total attributed eligible aggregate employment
45 shares determined with respect to such relocation pursuant to subdivi-
46 sion (o) of section 22-621 of the code of the preceding municipality.
47 For purposes of this subdivision, the terms "eligible aggregate employ-
48 ment shares", "relocate", "retail activity" and "hotel services" shall
49 have the meanings ascribed by section 22-621 of the code of the preced-
50 ing municipality.

51 (b) The credit allowed under this subdivision with respect to eligible
52 aggregate employment shares maintained with respect to particular prem-
53 ises to which the taxpayer has relocated shall be allowed for the taxa-
54 ble periods in the first calendar year during which such eligible aggre-
55 gate employment shares are maintained with respect to such premises and
56 for taxable periods in any of the twelve succeeding calendar years

1 during which eligible aggregate employment shares are maintained with
2 respect to such premises, provided that the credit allowed for the taxa-
3 ble periods in the twelfth succeeding calendar year shall be calculated
4 by multiplying the number of eligible aggregate employment shares main-
5 tained with respect to such premises in the twelfth succeeding calendar
6 year by the lesser of one and a fraction the numerator of which is the
7 number of days in the calendar year of relocation less the number of
8 days the eligible business maintained employment shares in the eligible
9 premises in the calendar year of relocation and the denominator of which
10 is the number of days in such twelfth succeeding year during which such
11 eligible aggregate employment shares are maintained with respect to such
12 premises. The credit allowable under this section shall be applied
13 against the amount of tax otherwise required to be paid for the last
14 taxable period of the calendar year as provided in subdivision a of
15 section 11-1105 of this chapter, shall be deducted from the taxpayer's
16 tax prior to the deduction of the credit provided in subdivision b of
17 such section, and shall be claimed on the tax return for the last taxa-
18 ble period of the calendar year. Except as provided in subdivision (c)
19 of this section, if the amount of the credit allowable under this subdivi-
20 sion for any calendar year exceeds the tax imposed for such last taxa-
21 ble period in such calendar year, the excess may be carried over, in
22 order, to the immediately succeeding taxable periods in the five imme-
23 diately succeeding calendar years and, to the extent not previously
24 allowable, shall be applied against the tax otherwise required to be
25 paid for such periods. Such carryover credit shall be deducted from the
26 taxpayer's tax prior to the deduction of the credit provided in subdivi-
27 sion b of section 11-1105 of this chapter. With respect to the last
28 taxable period in a calendar year, the credit for such calendar year
29 shall be taken prior to any carryover credit. If in any period there are
30 carryover credits available from more than one year, such credits shall
31 be applied against the tax in the order in which they were earned with
32 the oldest available credit being taken first.

33 (c) In the case of a taxpayer that has obtained a certification of
34 eligibility pursuant to chapter six-B of title twenty-two of the code of
35 the preceding municipality dated on or after July first, two thousand
36 for a relocation to eligible premises located within the revitalization
37 area defined in subdivision (n) of section 22-621 of the code of the
38 preceding municipality, the credits allowed under this section, or in
39 the case of a taxpayer that has relocated more than once, the portion of
40 such credits attributed to such certification of eligibility pursuant to
41 subdivision (a) of this section, against the tax imposed by this chapter
42 for the calendar year of such relocation and for the four calendar years
43 immediately succeeding the calendar year of such relocation, shall be
44 deemed to be erroneous payments of tax by the taxpayer to be credited or
45 refunded, in accordance with the provisions of section 11-1108 of this
46 chapter. For such calendar years, such credits or portions thereof may
47 not be carried over to any succeeding taxable year; provided, however,
48 that this subdivision shall not apply to any relocation for which an
49 application for a certification of eligibility was not submitted prior
50 to July first, two thousand three unless the date of such relocation is
51 on or after July first, two thousand.

52 § 11-1105.3 Lower Manhattan relocation employment assistance credit.
53 (a) A taxpayer that has obtained the certifications required by chapter
54 six-C of title twenty-two of the code of the preceding municipality
55 shall be allowed a credit against the tax imposed by this chapter,
56 provided, however, that a taxpayer that is a vendor of utility services

1 shall not be allowed the credit against the tax imposed by this chapter
2 unless it elects as provided in subdivision (d) of section 22-624 of the
3 code of the preceding municipality to take the credit against the tax
4 imposed by this chapter. The amount of the credit shall be the amount
5 determined by multiplying three thousand dollars by the number of eligi-
6 ble aggregate employment shares maintained by the taxpayer during the
7 calendar year with respect to eligible premises to which the taxpayer
8 has relocated; provided, however, that no credit shall be allowed for
9 the relocation of any retail activity or hotel services. For purposes of
10 this subdivision, the terms "eligible aggregate employment shares",
11 "eligible premises", "relocate", "retail activity" and "hotel services"
12 shall have the meanings ascribed by section 22-623 of the code of the
13 preceding municipality.

14 (b) The credit allowed under this section with respect to eligible
15 aggregate employment shares maintained with respect to eligible premises
16 to which the taxpayer has relocated shall be allowed for the taxable
17 period in which the relocation to eligible premises takes place and for
18 succeeding taxable periods in the calendar year of the relocation and in
19 any of the twelve succeeding calendar years during which eligible aggre-
20 gate employment shares are maintained with respect to eligible premises,
21 provided that the credit allowed for the taxable periods in the twelfth
22 succeeding calendar year shall be calculated by multiplying the number
23 of eligible aggregate employment shares maintained with respect to
24 eligible premises in the twelfth succeeding calendar year by the lesser
25 of one and a fraction the numerator of which is the number of days in
26 the calendar year of relocation less the number of days the taxpayer
27 maintained employment shares in eligible premises in the calendar year
28 of relocation and the denominator of which is the number of days in such
29 twelfth succeeding calendar year during which such eligible aggregate
30 employment shares are maintained with respect to such premises. The
31 credit allowable under this section shall be applied against the amount
32 of tax otherwise required to be paid for the last taxable period of the
33 calendar year as provided in subdivision a of section 11-1105 of this
34 chapter, shall be deducted from the taxpayer's tax prior to the
35 deduction of the credit provided in subdivision b of such section but
36 after the credit provided for in section 11-1105.2 of this chapter, and
37 shall be claimed on the tax return for the last taxable period of the
38 calendar year. Except as provided in subdivision (c) of this section, if
39 the amount of the credit allowable under this subdivision for any calen-
40 dar year exceeds the tax imposed for such last taxable period in such
41 calendar year, the excess may be carried over, in order, to the imme-
42 diately succeeding taxable periods in the five immediately succeeding
43 calendar years and, to the extent not previously allowable, shall be
44 applied against the tax otherwise required to be paid for such periods.
45 Such carryover credit shall be deducted from the taxpayer's tax prior to
46 the deduction of the credit provided in subdivision b of section 11-1105
47 of this chapter but after the credit provided for in section 11-1105.2
48 of this chapter. With respect to the last taxable period in a calendar
49 year, the credit for such calendar year shall be taken prior to any
50 carryover credit. If in any period there are carryover credits available
51 from more than one year, such credits shall be applied against the tax
52 in the order in which they were earned with the oldest available credit
53 being taken first.

54 (c) The credits allowed under this section, against the tax imposed by
55 this chapter for the calendar year of the relocation and for the four
56 taxable years immediately succeeding the calendar year of such relo-

1 cation, shall be deemed to be overpayments of tax by the taxpayer to be
2 credited or refunded, without interest, in accordance with the
3 provisions of section 11-1108 of this chapter. For such calendar years,
4 such credits or portions thereof may not be carried over to any succeed-
5 ing calendar year.

6 § 11-1106 Determination of tax. In case the return required by this
7 chapter shall be insufficient or unsatisfactory or if such return is not
8 filed, the commissioner of finance shall determine the amount of the tax
9 due from such information as is obtainable, and if necessary the tax may
10 be estimated upon the basis of external indices. Notice of such determi-
11 nation shall be given to the person liable for the payment of the tax.
12 Such determination shall finally and irrevocably fix such tax unless the
13 person against whom it is assessed, within ninety days after the giving
14 of notice of such determination or, if the commissioner of finance has
15 established a conciliation procedure pursuant to section 11-124 of this
16 title and the taxpayer has requested a conciliation conference in
17 accordance therewith, within ninety days from the mailing of a concil-
18 iation decision or the date of the commissioner's confirmation of the
19 discontinuance of the conciliation proceeding, both (1) serves a peti-
20 tion upon the commissioner of finance and (2) files a petition with the
21 tax appeals tribunal for a hearing, or unless such commissioner of his
22 or her own motion shall redetermine the same. Such hearing and any
23 appeal to the tax appeals tribunal sitting en banc from the decision
24 rendered in such hearing shall be conducted in the manner and subject to
25 the requirements prescribed by the tax appeals tribunal pursuant to
26 sections one hundred sixty-eight through one hundred seventy-two of the
27 charter of the preceding municipality as it existed January first, nine-
28 teen hundred ninety-four. After such hearing the tax appeals tribunal
29 shall give notice of its decision to the person against whom the tax is
30 assessed and to the commissioner of finance. A decision of the tax
31 appeals tribunal sitting en banc shall be reviewable for error, illegal-
32 ity, unconstitutionality or any other reason whatsoever by a proceeding
33 under article seventy-eight of the civil practice law and rules if
34 instituted by the person against whom the tax was assessed within four
35 months after the giving of the notice of such tax appeals tribunal deci-
36 sion. A proceeding under such article of such law and rules shall not be
37 instituted by a taxpayer unless (a) the amount of any tax sought to be
38 reviewed with penalties and interest thereon, if any, shall first be
39 deposited with the commissioner of finance and there shall be filed with
40 such commissioner an undertaking, issued by a surety company authorized
41 to transact business in this state and approved by the superintendent of
42 insurance of this state as to solvency and responsibility, in such
43 amount and with such sureties as a justice of the supreme court shall
44 approve, to the effect that if such proceeding be dismissed or the tax
45 confirmed, the taxpayer will pay all costs and charges which may accrue
46 in the prosecution of the proceeding, or (b) at the option of the
47 taxpayer such undertaking filed with the commissioner of finance may be
48 in a sum sufficient to cover the taxes, penalties and interest thereon
49 stated in such decision, plus the costs and charges which may accrue
50 against it in the prosecution of the proceeding, in which event the
51 taxpayer shall not be required to deposit such taxes, penalties and
52 interest as a condition precedent to the application.

53 § 11-1107 Assessment of tax where change or correction of sales and
54 compensating use tax liability involved. a. If a taxpayer fails to
55 comply with subdivision d of section 11-1104 of this chapter in not
56 reporting a change or correction of its sales and compensating use tax

1 liability or in not filing a copy of an amended return or report relat-
2 ing to its sales and compensating use tax liability, instead of the mode
3 and time of assessment provided for in section 11-1106 of this chapter,
4 the commissioner of finance may assess a deficiency based upon such
5 changed or corrected sales and compensating use tax liability, as same
6 relates to credits claimed under this chapter, by mailing to the taxpay-
7 er a notice of additional tax due specifying the amount of the deficien-
8 cy, and such deficiency, together with the interest and penalties stated
9 in such notice, shall be deemed assessed on the date such notice is
10 mailed unless within thirty days after the mailing of such notice a
11 report of the state change or correction or a copy of an amended return
12 or report, where such copy was required, is filed accompanied by a
13 statement showing wherein such state determination and such notice of
14 additional tax due are erroneous. Such notice shall not be considered as
15 a notice of determination for the purposes of section 11-1106 of this
16 chapter.

17 b. If a report filed pursuant to subdivision d of section 11-1104 of
18 this chapter concedes the accuracy of a state change or correction of
19 sales and compensating use tax liability, any deficiency in tax result-
20 ing therefor shall be deemed assessed on the date of filing such report.

21 § 11-1108 Refunds. a. In the manner provided in this section the
22 commissioner of finance shall refund or credit, without interest, any
23 tax, penalty or interest erroneously, illegally or unconstitutionally
24 collected or paid, if application for such refund shall be made to the
25 commissioner of finance within three years from the time the return was
26 filed or two years from the time the tax was paid, whichever of such
27 periods expires later, or if no return was filed, within two years from
28 the time the tax was paid. If the claim is filed within the three-year
29 period, the amount of the credit or refund shall not exceed the portion
30 of the tax paid within the three years immediately preceding the filing
31 of the claim plus the period of any extension of time for filing the
32 return. Whenever a refund or credit is made or denied by the commission-
33 er of finance, he or she shall state his or her reason therefor and give
34 notice thereof to the taxpayer in writing. The commissioner of finance
35 may, in lieu of any refund required to be made, allow credit therefor on
36 payments due from the applicant.

37 b. Any determination of the commissioner of finance denying a refund
38 or credit pursuant to subdivision a of this section shall be final and
39 irrevocable unless the applicant for such refund or credit, within nine-
40 ty days from the mailing of notice of such determination, or, if the
41 commissioner of finance has established a conciliation procedure pursu-
42 ant to section 11-124 of this title and the applicant has requested a
43 conciliation conference in accordance therewith, within ninety days from
44 the mailing of a conciliation decision or the date of the commissioner's
45 confirmation of the discontinuance of the conciliation proceeding, both
46 (1) serves a petition upon the commissioner of finance and (2) files a
47 petition with the tax appeals tribunal for a hearing. Such petition for
48 a refund or credit, made as provided in this section, shall be deemed an
49 application for a revision of any tax, penalty or interest complained
50 of. Such hearing and any appeal to the tax appeals tribunal sitting en
51 banc from the decision rendered in such hearing shall be conducted in
52 the manner and subject to the requirements prescribed by the tax appeals
53 tribunal pursuant to sections one hundred sixty-eight through one
54 hundred seventy-two of the charter of the preceding municipality as it
55 existed January first, nineteen hundred ninety-four. After such hearing,
56 the tax appeals tribunal shall give notice of its decision to the appli-

1 cant and to the commissioner of finance. The applicant shall be entitled
2 to institute a proceeding under article seventy-eight of the civil prac-
3 tice law and rules to review a decision of the tax appeals tribunal
4 sitting en banc if application to the supreme court be made therefor
5 within four months after the giving of notice of such decision, and
6 provided, in the case of an application by a taxpayer, a final determi-
7 nation of tax due was not previously made.

8 c. If a taxpayer is required by subdivision d of section 11-1104 of
9 this chapter to file a report or amended return in respect of a change
10 or correction of its sales and compensating use tax liability, claim for
11 credit or refund of any resulting overpayment of tax shall be filed by
12 the taxpayer within one year from the time such report or amended return
13 was required to be filed with the commissioner of finance. This subdivi-
14 sion shall not affect the time within which or the amount for which a
15 claim for credit or refund may be filed apart from this subdivision.

16 d. A person shall not be entitled to a revision, refund or credit
17 under this section of a tax, interest or penalty which had been deter-
18 mined to be due pursuant to the provisions of section 11-1106 or 11-1107
19 of this chapter where he or she has had a hearing or an opportunity for
20 a hearing, as provided in such sections, or has failed to avail himself
21 or herself of the remedies therein provided. No refund or credit shall
22 be made of a tax, interest or penalty paid after a determination by the
23 commissioner of finance made pursuant to section 11-1106 or 11-1107 of
24 this chapter unless it be found that such determination was erroneous,
25 illegal or unconstitutional or otherwise improper, by the tax appeals
26 tribunal after a hearing or of the commissioner of finance's own motion
27 or, if such tax appeals tribunal affirms in whole or in part the deter-
28 mination of the commissioner of finance, in a proceeding under article
29 seventy-eight of the civil practice law and rules pursuant to the
30 provisions of said section, in which event refund or credit without
31 interest shall be made of the tax, interest or penalty found to have
32 been overpaid.

33 § 11-1109 Reserves. In cases where the taxpayer has applied for a
34 refund and has instituted a proceeding under article seventy-eight of
35 the civil practice law and rules to review a determination adverse to
36 him or her on his or her application for refund, the comptroller shall
37 set up appropriate reserves to meet any decision adverse to the city.

38 § 11-1110 Remedies exclusive. The remedies provided by this chapter
39 shall be the exclusive remedies available to any person for the review
40 of tax liability imposed by this chapter; and no determination or
41 proposed determination of tax or determination on any application for
42 refund by the commissioner of finance, nor any decision by the tax
43 appeals tribunal or any of its administrative law judges, shall be
44 enjoined or reviewed by an action for declaratory judgment, an action
45 for money had and received or by any action or proceeding other than, in
46 the case of a decision by the tax appeals tribunal sitting en banc, a
47 proceeding under article seventy-eight of the civil practice law and
48 rules; provided, however, that a taxpayer may proceed by a declaratory
49 judgment if he or she institutes suit within thirty days after a defi-
50 ciency assessment is made and pays the amount of the deficiency assess-
51 ment to the commissioner of finance prior to the institution of such
52 suit and posts a bond for costs as provided in section 11-1106 of this
53 chapter.

54 § 11-1111 Proceedings to recover tax. a. Whenever any person shall
55 fail to pay any tax or penalty or interest imposed by this chapter as
56 provided in this section, the corporation counsel shall, upon the

1 request of the commissioner of finance, bring or cause to be brought an
2 action to enforce payment of the same against the person liable for the
3 same on behalf of the city of Staten Island in any court of the state of
4 New York or of any other state or of the United States. If, however,
5 such commissioner in his or her discretion believes that a taxpayer
6 subject to the provisions of this chapter is about to cease business,
7 leave the state or remove or dissipate the assets out of which tax or
8 penalties might be satisfied and that any such tax or penalty will not
9 be paid when due, he or she may declare such tax or penalty to be im-
10 mediately due and payable and may issue a warrant immediately.

11 b. As a further additional or alternate remedy, the commissioner of
12 finance may issue a warrant, directed to the city sheriff, commanding
13 him or her to levy upon and sell the real and personal property of such
14 person which may be found within the city, for the payment of the amount
15 thereof, with any penalties and the cost of executing the warrant and to
16 return such warrant to such commissioner and to pay to him or her the
17 money collected by virtue thereof within sixty days after the receipt of
18 such warrant. The city sheriff shall, within five days after the
19 receipt of the warrant, file with the county clerk a copy thereof and
20 thereupon such clerk shall enter in the judgment docket the name of the
21 person mentioned in the warrant and the amount of the tax and penalties
22 for which the warrant is issued and the date when such copy is filed.
23 Thereupon the amount of such warrant so docketed shall have the full
24 force and effect of a judgment and shall become a lien upon the title to
25 and interest in real and personal property of the person against whom
26 the warrant is issued. The city sheriff shall then proceed upon the
27 warrant in the same manner and with like effect as that provided by law
28 in respect to executions against property upon judgments of a court of
29 record, and for services in executing the warrant he or she shall be
30 entitled to the same fees which he or she may collect in the same
31 manner. In the discretion of the commissioner of finance a warrant of
32 like terms, force and effect may be issued and directed to any officer
33 or employee of the department of finance and in the execution thereof
34 such officer or employee shall have all the power conferred by law upon
35 sheriffs, but he or she shall be entitled to no fee or compensation in
36 excess of the actual expenses paid in the performance of such duty. If
37 a warrant is returned not satisfied in full, the commissioner of finance
38 may from time to time issue new warrants and shall also have the same
39 remedies to enforce the amount due thereunder as if the city had recov-
40 ered judgment therefor and execution thereon had been returned unsatis-
41 fied.

42 c. Whenever there is made a sale, transfer or assignment in bulk of
43 any part or the whole of a stock of merchandising or of fixtures, or
44 merchandise and of fixtures pertaining to the conducting of the business
45 of the seller, transferor or assignor, otherwise than in the ordinary
46 course of trade and in the regular prosecution of said business, the
47 purchaser, transferee or assignee shall at least ten days before taking
48 possession of such merchandise, fixtures, or merchandise and fixtures,
49 or paying therefor, notify the commissioner of finance by registered
50 mail of the proposed sale and of the price, terms and conditions there-
51 of, whether or not the seller, transferor or assignor, has represented
52 to, or informed the purchaser, transferee or assignee that it owes any
53 tax pursuant to this chapter, whether or not the purchaser, transferee
54 or assignee has knowledge that such taxes are owing, and whether or not
55 any such taxes are in fact owing.

1 Whenever the purchaser, transferee or assignee shall fail to give the
2 notice to the commissioner of finance required by this subdivision, or
3 whenever such commissioner shall inform the purchaser, transferee or
4 assignee that a possible claim for such tax or taxes exists, any sums of
5 money, property or choses in action, or other consideration, which the
6 purchaser, transferee or assignee is required to transfer over to the
7 seller, transferor or assignor shall be subject to a first priority
8 right and lien for any such taxes theretofore or thereafter determined
9 to be due from the seller, transferor or assignor to the city, and the
10 purchaser, transferee or assignee is forbidden to transfer to the sell-
11 er, transferor or assignor any such sums of money, property or choses in
12 action to the extent of the amount of the city's claim. For failure to
13 comply with the provisions of this subdivision the purchaser, transferee
14 or assignee, in addition to being subject to the liabilities and reme-
15 dies imposed under the provisions of former article six of the uniform
16 commercial code shall be personally liable for the payment to the city
17 of any such taxes theretofore or thereafter determined to be due to the
18 city from the seller, transferor or assignor and such liability may be
19 assessed and enforced in the same manner as the liability for tax is
20 imposed under this chapter.

21 d. The commissioner of finance, if he or she finds that the interests
22 of the city will not thereby be jeopardized, and upon such conditions as
23 the commissioner of finance may require, may release any property from
24 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
25 tions to tax, penalties and interest filed pursuant to subdivision b of
26 this section, and such release or vacating of the warrant may be
27 recorded in the office of any recording officer in which such warrant
28 has been filed. The clerk shall thereupon cancel and discharge as of the
29 original date of docketing the vacated warrant.

30 § 11-1112 General powers of the commissioner of finance. In addition
31 to the powers granted to the commissioner of finance in this chapter, he
32 or she is hereby authorized and empowered:

33 1. To make, adopt and amend rules and regulations appropriate to the
34 carrying out of this chapter and the purposes thereof; and to prescribe
35 the form of blanks, reports and other records relating to the enforce-
36 ment and administration of this chapter;

37 2. To prescribe methods for determining the amount of "gross income"
38 and "gross operating income" received by a person subject to tax pursu-
39 ant to this chapter;

40 3. To request information from the tax commission of the state of New
41 York or treasury department of the United States relative to any person;
42 and to afford returns, reports and other information to such tax commis-
43 sion or such treasury department relative to any person, any other
44 provision in this chapter to the contrary notwithstanding;

45 4. To extend, for cause shown, the time for filing any return for a
46 period not exceeding thirty days; and to compromise disputed claims in
47 connection with the taxes imposed pursuant to this chapter;

48 5. To delegate his or her functions hereunder to a deputy commission-
49 er of finance or other employee or employees of the department of
50 finance of the city;

51 6. To assess, determine, revise and readjust the taxes imposed under
52 this chapter.

53 § 11-1113 Administration of oaths and compelling testimony. a. The
54 commissioner of finance, his or her employees duly designated and
55 authorized by him or her, the tax appeals tribunal and any of its duly
56 designated and authorized employees shall have power to administer oaths

1 and take affidavits in relation to any matter or proceedings in the
2 exercise of their powers and duties under this chapter. Such commis-
3 sioner and the tax appeals tribunal shall have power to subpoena and
4 require the attendance of witnesses and the production of books, papers
5 and documents to secure information pertinent to the performance of the
6 duties of such commissioner or of the tax appeals tribunal hereunder and
7 of the enforcement of this chapter, and to examine them in relation
8 thereto, and to issue commissions for the examination of witnesses who
9 are out of the state or unable to attend before the commissioner or the
10 tax appeals tribunal or excused from attendance.

11 b. A justice of the supreme court either in court or at chambers shall
12 have power summarily to enforce by proper proceedings the attendance and
13 testimony of witnesses and the production and examination of books,
14 papers and documents called for by the subpoena of the commissioner of
15 finance or the tax appeals tribunal under this chapter.

16 c. Cross-reference; criminal penalties. For failure to obey subpoenas
17 or for testifying falsely, see section 11-4007 of this title; for
18 supplying false or fraudulent information, see section 11-4002 of this
19 title.

20 d. The officers who serve the summons or subpoena of the commissioner
21 of finance or the tax appeals tribunal and witnesses attending in
22 response thereto shall be entitled to the same fees as are allowed to
23 officers and witnesses in civil cases in courts of record, except as
24 herein otherwise provided. Such officers shall be the city sheriff, and
25 his or her duly appointed deputies or any officers or employees of the
26 department of finance or the tax appeals tribunal, designated to serve
27 such process.

28 § 11-1114 Interest and penalties. (a) Interest on underpayments. If
29 any amount of tax is not paid on or before the last date prescribed for
30 payment, without regard to any extension of time granted for payment,
31 interest on such amount at the rate set by the commissioner of finance
32 pursuant to subdivision (g) of this section, or, if no rate is set, at
33 the rate of seven and one-half percent per annum, shall be paid for the
34 period from such last date to the date of payment. In computing the
35 amount of interest to be paid, such interest shall be compounded daily.
36 Interest under this subdivision shall not be paid if the amount thereof
37 is less than one dollar.

38 (b) (1) Failure to file return. (A) In case of failure to file a
39 return under this chapter on or before the prescribed date, determined
40 with regard to any extension of time for filing, unless it is shown that
41 such failure is due to reasonable cause and not due to willful neglect,
42 there shall be added to the amount required to be shown as tax on such
43 return five percent of the amount of such tax if the failure is for not
44 more than one month, with an additional five percent for each additional
45 month or fraction thereof during which such failure continues, not
46 exceeding twenty-five percent in the aggregate.

47 (B) In the case of a failure to file a return of tax within sixty days
48 of the date prescribed for filing of such return, determined with regard
49 to any extension of time for filing, unless it is shown that such fail-
50 ure is due to reasonable cause and not due to willful neglect, the addi-
51 tion to tax under subparagraph (A) of this paragraph shall not be less
52 than the lesser of one hundred dollars or one hundred percent of the
53 amount required to be shown as tax on such return.

54 (C) For purposes of this paragraph, the amount of tax required to be
55 shown on the return shall be reduced by the amount of any part of the
56 tax which is paid on or before the date prescribed for payment of the

1 tax and by the amount of any credit against the tax which may be claimed
2 upon the return.

3 (2) Failure to pay tax shown on return. In case of failure to pay the
4 amount shown as tax on a return required to be filed under this chapter
5 on or before the prescribed date, determined with regard to any exten-
6 sion of time for payment, unless it is shown that such failure is due to
7 reasonable cause and not due to willful neglect, there shall be added
8 to the amount shown as tax on such return one-half of one percent of the
9 amount of such tax if the failure is not for more than one month, with
10 an additional one-half of one percent for each additional month or frac-
11 tion thereof during which such failure continues, not exceeding twenty-
12 five percent in the aggregate. For the purpose of computing the addition
13 for any month the amount of tax shown on the return shall be reduced by
14 the amount of any part of the tax which is paid on or before the begin-
15 ning of such month and by the amount of any credit against the tax which
16 may be claimed upon the return. If the amount of tax required to be
17 shown on a return is less than the amount shown as tax on such return,
18 this paragraph shall be applied by substituting such lower amount.

19 (3) Failure to pay tax required to be shown on return. In case of
20 failure to pay any amount in respect of any tax required to be shown on
21 a return required to be filed under this chapter which is not so shown,
22 including a determination made pursuant to section 11-1106 of this chap-
23 ter, within ten days of the date of a notice and demand therefor, unless
24 it is shown that such failure is due to reasonable cause and not due to
25 willful neglect, there shall be added to the amount of tax stated in
26 such notice and demand one-half of one percent of such tax if the fail-
27 ure is not for more than one month, with an additional one-half of one
28 percent for each additional month or fraction thereof during which such
29 failure continues, not exceeding twenty-five percent in the aggregate.
30 For the purpose of computing the addition for any month, the amount of
31 tax stated in the notice and demand shall be reduced by the amount of
32 any part of the tax which is paid before the beginning of such month.

33 (4) Limitations on additions.

34 (A) With respect to any return, the amount of the addition under para-
35 graph one of this subdivision shall be reduced by the amount of the
36 addition under paragraph two of this subdivision for any month to which
37 an addition applies under both paragraphs one and two of this subdivi-
38 sion. In any case described in subparagraph (B) of paragraph one of
39 this subdivision, the amount of the addition under such paragraph one
40 shall not be reduced below the amount provided in such subparagraph.

41 (B) With respect to any return, the maximum amount of the addition
42 permitted under paragraph three of this subdivision shall be reduced by
43 the amount of the addition under paragraph one of this subdivision,
44 determined without regard to subparagraph (B) of such paragraph one
45 which is attributable to the tax for which the notice and demand is made
46 and which is not paid within ten days of such notice and demand.

47 (c) Underpayment due to negligence. (1) If any part of an underpayment
48 of tax is due to negligence or intentional disregard of this chapter or
49 any rules or regulations hereunder, but without intent to defraud, there
50 shall be added to the tax a penalty equal to five percent of the under-
51 payment.

52 (2) There shall be added to the tax, in addition to the amount deter-
53 mined under paragraph one of this subdivision, an amount equal to fifty
54 percent of the interest payable under subdivision (a) of this section
55 with respect to the portion of the underpayment described in such para-
56 graph one which is attributable to the negligence or intentional disre-

1 gard referred to in such paragraph one, for the period beginning on the
2 last date prescribed by law for payment of such underpayment, determined
3 without regard to any extension, and ending on the date of the assess-
4 ment of the tax, or, if earlier, the date of the payment of the tax.

5 (3) If any payment is shown on a return made by a payor with respect
6 to dividends, patronage dividends and interest under subsection (a) of
7 section six thousand forty-two, subsection (a) of section six thousand
8 forty-four or subsection (a) of section six thousand forty-nine of the
9 internal revenue code of nineteen hundred fifty-four, respectively, and
10 the payee fails to include any portion of such payment in gross income
11 or gross operating income, when required under this chapter to be so
12 included, any portion of an underpayment attributable to such failure
13 shall be treated, for purposes of this subdivision, as due to negligence
14 in the absence of clear and convincing evidence to the contrary. If any
15 penalty is imposed under this subdivision by reason of this paragraph,
16 the amount of the penalty imposed by paragraph one of this subdivision
17 shall be five percent of the portion of the underpayment which is
18 attributable to the failure described in this paragraph.

19 (d) Underpayment due to fraud. (1) If any part of an underpayment of
20 tax is due to fraud, there shall be added to the tax a penalty equal to
21 two times of the underpayment.

22 (2) The penalty under this subdivision shall be in lieu of any other
23 addition to tax imposed by subdivision (b) or (c) of this section.

24 (e) Additional penalty. Any person who, with fraudulent intent, shall
25 fail to pay any tax imposed by this chapter, or to make, render, sign or
26 certify any return, or to supply any information within the time
27 required by or under this chapter, shall be liable for a penalty of not
28 more than one thousand dollars, in addition to any other amounts
29 required under this chapter to be imposed, assessed and collected by the
30 commissioner of finance. The commissioner of finance shall have the
31 power, in his or her discretion, to waive, reduce or compromise any
32 penalty under this subdivision.

33 (f) The interest and penalties imposed by this section shall be paid
34 and disposed of in the same manner as other revenues from this chapter.
35 Unpaid interest and penalties may be enforced in the same manner as the
36 tax imposed by this chapter.

37 (g) (1) Authority to set interest rates. The commissioner of finance
38 shall set the rate of interest to be paid pursuant to subdivision (a) of
39 this section, but if no such rate of interest is set, such rate shall be
40 deemed to be set at seven and one-half percent per annum. Such rate
41 shall be the rate prescribed in paragraph two of this subdivision but
42 shall not be less than seven and one-half percent per annum. Any such
43 rate set by the commissioner of finance shall apply to taxes, or any
44 portion thereof, which remain or become due on or after the date on
45 which such rate becomes effective and shall apply only with respect to
46 interest computed or computable for periods or portions of periods
47 occurring in the period in which such rate is in effect.

48 (2) General rule. The rate of interest set under this subdivision
49 shall be the sum of (i) the federal short-term rate as provided under
50 paragraph three of this subdivision, plus (ii) seven percentage points.

51 (3) Federal short-term rate. For purposes of this subdivision:

52 (A) The federal short-term rate for any month shall be the federal
53 short-term rate determined by the United States secretary of the treas-
54 ury during such month in accordance with subsection (d) of section
55 twelve hundred seventy-four of the internal revenue code for use in
56 connection with section six thousand six hundred twenty-one of the

1 internal revenue code. Any such rate shall be rounded to the nearest
2 full percent, or, if a multiple of one-half of one percent, such rate
3 shall be increased to the next highest full percent.

4 (B) Period during which rate applies.

5 (i) In general. Except as provided in clause (ii) of this subpara-
6 graph, the federal short-term rate for the first month in each calendar
7 quarter shall apply during the first calendar quarter beginning after
8 such month.

9 (ii) Special rule for the month of September, nineteen hundred eight-
10 y-nine. The federal short-term rate for the month of April, nineteen
11 hundred eighty-nine shall apply with respect to setting the rate of
12 interest for the month of September, nineteen hundred eighty-nine.

13 (4) Publication of interest rate. The commissioner of finance shall
14 cause to be published in the City Record, and give other appropriate
15 general notice of, the interest rate to be set under this subdivision no
16 later than twenty days preceding the first day of the calendar quarter
17 during which such interest rate applies. The setting and publication of
18 such interest rate shall not be included within paragraph (a) of subdi-
19 vision five of section one thousand forty-one of the city charter of the
20 preceding municipality as it existed January first, nineteen hundred
21 ninety-four relating to the definition of a rule.

22 (h) Miscellaneous. (1) The certificate of the commissioner of finance
23 to the effect that a tax has not been paid, that a return has not been
24 filed, or that information has not been supplied pursuant to the
25 provisions of this chapter shall be prima facie evidence thereof.

26 (2) Cross-reference: For criminal penalties, see chapter forty of this
27 title.

28 (i) Substantial understatement of liability. If there is a substantial
29 understatement of tax for any taxable period, there shall be added to
30 the tax an amount equal to ten percent of the amount of any underpayment
31 attributable to such understatement. For purposes of this subdivision,
32 there is a substantial understatement of tax for any taxable period if
33 the amount of the understatement for the taxable period exceeds the
34 greater of ten percent of the tax required to be shown on the return for
35 the taxable period or five thousand dollars. For purposes of this subdi-
36 vision, the term "understatement" means the excess of the amount of the
37 tax required to be shown on the return for the taxable period, over the
38 amount of the tax imposed which is shown on the return, reduced by any
39 rebate. The amount of such understatement shall be reduced by that
40 portion of the understatement which is attributable to the tax treatment
41 of any item by the taxpayer if there is or was substantial authority for
42 such treatment, or any item with respect to which the relevant facts
43 affecting the item's tax treatment are adequately disclosed in the
44 return or in a statement attached to the return. The commissioner of
45 finance may waive all or any part of the addition to tax provided by
46 this subdivision on a showing by the taxpayer that there was reasonable
47 cause for the understatement, or part thereof, and that the taxpayer
48 acted in good faith.

49 (j) Aiding or assisting in the giving of fraudulent returns, reports,
50 statements or other documents. (1) Any person who, with the intent that
51 tax be evaded, shall, for a fee or other compensation or as an incident
52 to the performance of other services for which such person receives
53 compensation, aid or assist in, or procure, counsel, or advise the prep-
54 aration or presentation under, or in connection with any matter arising
55 under this title of any return, report, statement or other document
56 which is fraudulent or false as to any material matter, or supply any

1 false or fraudulent information, whether or not such falsity or fraud is
2 with the knowledge or consent of the person authorized or required to
3 present such return, report, statement or other document shall pay a
4 penalty not exceeding ten thousand dollars.

5 (2) For purposes of paragraph one of this subdivision, the term
6 "procures" includes ordering, or otherwise causing, a subordinate to do
7 an act, and knowing of, and not attempting to prevent, participation by
8 a subordinate in an act. The term "subordinate" means any other person,
9 whether or not a director, officer, employee, or agent of the taxpayer
10 involved, over whose activities the person has direction, supervision,
11 or control.

12 (3) For purposes of paragraph one of this subdivision, a person
13 furnishing typing, reproducing, or other mechanical assistance with
14 respect to a document shall not be treated as having aided or assisted
15 in the preparation of such document by reason of such assistance.

16 (4) The penalty imposed by this subdivision shall be in addition to
17 any other penalty provided by law.

18 (k) Failure to include on return information relating to issuer's
19 allocation percentage. Where a return is filed but does not contain (1)
20 the information necessary to compute the taxpayer's issuer's allocation
21 percentage, as defined in subparagraph one of paragraph (b) of subdivi-
22 sion three of section 11-604 of this title, where the same is called for
23 on the return, or, (2) the taxpayer's issuer's allocation percentage,
24 where the same is called for on the return but where all of the informa-
25 tion necessary for the computation of such percentage is not called for
26 on the return, then unless it is shown that such failure is due to
27 reasonable cause and not due to willful neglect there shall be added to
28 the tax a penalty of five hundred dollars.

29 (1) False or fraudulent document penalty. Any taxpayer that submits a
30 false or fraudulent document to the department shall be subject to a
31 penalty of one hundred dollars per document submitted, or five hundred
32 dollars per tax return submitted. Such penalty shall be in addition to
33 any other penalty or addition provided by law.

34 § 11-1115 Notices and limitations of time. a. Any notice authorized
35 or required under the provisions of this chapter may be given by mailing
36 the same to the person for whom it is intended in a postpaid envelope
37 addressed to such person at the address given in the last return filed
38 by such person pursuant to the provisions of this chapter or in any
39 application made by him or her, or, if no return has been filed or
40 application made, then to such address as may be obtainable. The mail-
41 ing of such notice shall be presumptive evidence of the receipt of the
42 same by the person to whom addressed. Any period of time which is
43 determined according to the provisions of this chapter by the giving of
44 notice shall commence to run from the date of mailing of such notice.

45 b. The provisions of the civil practice law and rules or any other law
46 relative to limitations of time for the enforcement of a civil remedy
47 shall not apply to any proceeding or action by the city taken to levy,
48 appraise, assess, determine or enforce the collection of any tax or
49 penalty provided by this chapter. However, except in the case of a
50 wilfully false or fraudulent return with intent to evade the tax, no
51 assessment of additional tax imposed under a local law for the preceding
52 municipality enacted subsequent to July first, nineteen hundred thirty-
53 eight, shall be made after the expiration of more than three years from
54 the date of the filing of a return, provided, however, that where no
55 return has been filed, or where the taxpayer fails to file a report or
56 return in respect of a change or correction in the amount of sales and

1 compensating use tax liability as provided by law, the tax may be
2 assessed at any time. Where the taxpayer files a report or return in
3 respect of a change or correction in sales and compensating use tax
4 liability, as required by subdivision d of section 11-1104 of this chap-
5 ter, an assessment may be made at any time within two years after such
6 report or return was filed, provided, however, that this sentence shall
7 not affect the time within which an assessment may otherwise be made.

8 c. Where, before the expiration of the period prescribed herein for
9 the assessment of an additional tax, a taxpayer has consented in writing
10 that such period be extended, the amount of such additional tax due may
11 be determined at any time within such extended period. The period so
12 extended may be further extended by subsequent consents in writing made
13 before the expiration of the extended period.

14 d. If any return, claim, statement, notice, application, or other
15 document required to be filed, or any payment required to be made, with-
16 in a prescribed period or on or before a prescribed date under authority
17 of any provision of this chapter is, after such period or such date,
18 delivered by United States mail to the commissioner of finance, the tax
19 appeals tribunal, bureau, office, officer or person with which or with
20 whom such document is required to be filed, or to which or to whom such
21 payment is required to be made, the date of the United States postmark
22 stamped on the envelope shall be deemed to be the date of delivery. This
23 subdivision shall apply only if the postmark date falls within the
24 prescribed period or on or before the prescribed date for the filing of
25 such document, or for making the payment, including any extension grant-
26 ed for such filing or payment, and only if such document or payment was
27 deposited in the mail, postage prepaid, properly addressed to the
28 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
29 cer or person with which or with whom the document is required to be
30 filed or to which or to whom such payment is required to be made. If any
31 document is sent by United States registered mail, such registration
32 shall be prima facie evidence that such document was delivered to the
33 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
34 cer or person to which or to whom addressed, and the date of registra-
35 tion shall be deemed the postmark date. The commissioner of finance or,
36 where relevant, the tax appeals tribunal is authorized to provide by
37 regulation the extent to which the provisions such with respect to prima
38 facie evidence of delivery and the postmark date shall apply to certi-
39 fied mail. Except as provided in subdivision f of this section, this
40 subdivision shall apply in the case of postmarks not made by the United
41 States postal service only if and to the extent provided by regulation
42 of the commissioner of finance or where relevant, the tax appeals tribu-
43 nal.

44 e. When the last day prescribed under authority of this chapter,
45 including any extension of time, for performing any act falls on a
46 Saturday, Sunday or legal holiday in the state, the performance of such
47 act shall be considered timely if it is performed on the next succeeding
48 day which is not a Saturday, Sunday or legal holiday.

49 f. (1) Any reference in subdivision d of this section to the United
50 States mail shall be treated as including a reference to any delivery
51 service designated by the secretary of the treasury of the United States
52 pursuant to section seventy-five hundred two of the internal revenue
53 code and any reference in subdivision d of this section to a United
54 States postmark shall be treated as including a reference to any date
55 recorded or marked in the manner described in section seventy-five
56 hundred two of the internal revenue code by a designated delivery

1 service. If the commissioner of finance finds that any delivery service
2 designated by such secretary is inadequate for the needs of the city,
3 the commissioner of finance may withdraw such designation for purposes
4 of this title. The commissioner of finance may also designate additional
5 delivery services meeting the criteria of section seventy-five hundred
6 two of the internal revenue code for purposes of this title, or may
7 withdraw any such designation if the commissioner of finance finds that
8 a delivery service so designated is inadequate for the needs of the
9 city. Any reference in subdivision d of this section to the United
10 States mail shall be treated as including a reference to any delivery
11 service designated by the commissioner of finance and any reference in
12 subdivision d of this section to a United States postmark shall be
13 treated as including a reference to any date recorded or marked in the
14 manner described in section seventy-five hundred two of the internal
15 revenue code by a delivery service designated by the commissioner of
16 finance; provided, however, any withdrawal of designation or additional
17 designation by the commissioner of finance shall not be effective for
18 purposes of service upon the tax appeals tribunal, unless and until such
19 withdrawal of designation or additional designation is ratified by the
20 president of the tax appeals tribunal.

21 (2) Any equivalent of registered or certified mail designated by the
22 United States secretary of the treasury, or as may be designated by the
23 commissioner of finance pursuant to the same criteria used by such
24 secretary for such designations pursuant to section seventy-five hundred
25 two of the internal revenue code, shall be included within the meaning
26 of registered or certified mail as used in subdivision d of this
27 section. If the commissioner of finance finds that any equivalent of
28 registered or certified mail designated by such secretary or the commis-
29 sioner of finance is inadequate for the needs of the city, the commis-
30 sioner of finance may withdraw such designation for purposes of this
31 title. Notwithstanding the foregoing, any withdrawal of designation or
32 additional designation by the commissioner of finance shall not be
33 effective for purposes of service upon the tax appeals tribunal, unless
34 and until such withdrawal of designation or additional designation is
35 ratified by the president of the tax appeals tribunal.

36 § 11-1116 Returns to be secret. a. Except in accordance with proper
37 judicial order or as otherwise provided by law, it shall be unlawful for
38 the commissioner of finance, the tax appeals tribunal, or any officer or
39 employee of the department of finance or the tax appeals tribunal to
40 divulge or make known in any manner, the receipts or any other informa-
41 tion relating to the business of a taxpayer contained in any return
42 required under this chapter. The officers charged with the custody of
43 such returns shall not be required to produce any of them or evidence of
44 anything contained in them in any action or proceeding in any court,
45 except on behalf of the city or the commissioner of finance, or on
46 behalf of any party to any action or proceeding under the provisions of
47 this chapter when the returns or facts shown thereby are directly
48 involved in such action or proceeding, in either of which events, the
49 court may require the production of, and may admit in evidence, so much
50 of said returns or of the facts shown thereby, as are pertinent to the
51 action or proceeding and no more. Nothing in this subdivision shall be
52 construed to prohibit the delivery to a taxpayer or his or her duly
53 authorized representative of a certified copy of any return filed in
54 connection with his or her tax, nor to prohibit the publication of
55 statistics so classified as to prevent the identification of particular
56 returns and the items thereof, or the inspection by the corporation

1 counsel of the city or other legal representatives of such city of the
2 return of any taxpayer who shall bring action or proceeding to set aside
3 or review the tax based thereon, or against whom an action or proceeding
4 has been instituted or is contemplated for the collection of a tax,
5 penalty or interest. Returns shall be preserved for three years and
6 thereafter until the commissioner of finance permits them to be
7 destroyed.

8 b. (1) Any officer or employee of the city who willfully violates the
9 provisions of subdivision a of this section shall be dismissed from
10 office and be incapable of holding any public office in this city for a
11 period of five years thereafter.

12 (2) Cross-reference: For criminal penalties, see chapter forty of this
13 title.

14 c. This section shall be deemed a state statute for purposes of para-
15 graph (a) of subdivision two of section eighty-seven of the public offi-
16 cers law.

17 d. Notwithstanding anything in subdivision a of this section to the
18 contrary, if a taxpayer has petitioned the tax appeals tribunal for
19 administrative review as provided in section one hundred seventy of the
20 charter of the preceding municipality as it existed January first, nine-
21 teen hundred ninety-four, the commissioner of finance shall be author-
22 ized to present to the tribunal any report or return of such taxpayer,
23 or any information contained therein or relating thereto, which may be
24 material or relevant to the proceeding before the tribunal. The tax
25 appeals tribunal shall be authorized to publish a copy or a summary of
26 any decision rendered pursuant to section one hundred seventy-one of the
27 charter of the preceding municipality as it existed January first, nine-
28 teen hundred ninety-four.

29 § 11-1117 Construction and enforcement. This chapter shall be
30 construed and enforced in conformity with chapter ninety-three of the
31 laws of nineteen hundred sixty-five, as amended, pursuant to which it is
32 enacted.

33 § 11-1118 Disposition of revenues. All revenues resulting from the
34 imposition of the tax under this chapter shall be paid into the treasury
35 of the city and shall be credited to and deposited in the general fund
36 of the city, but no part of such revenues may be expended unless appro-
37 priated in the annual budget of the city.

38 § 11-1119 Determinations of place of primary use of wireless telecom-
39 munications services. a. A home service provider shall be responsible
40 for obtaining and maintaining the customer's place of primary use as
41 defined in subdivision twenty of section 11-1101 of this chapter. Except
42 as provided in subdivision b of this section, if the home service
43 provider's reliance on the information provided by its customer is in
44 good faith: (1) the home service provider can rely on the applicable
45 residential or business street address supplied by the home service
46 provider's customer; and (2) the home service provider shall not be held
47 liable for any additional taxes under this chapter based on a different
48 determination of the place of primary use.

49 b. The commissioner of finance, or the commissioner of taxation and
50 finance of the state of New York on behalf of the commissioner of
51 finance, may determine that the address used by a home service provider
52 for purposes of this chapter does not meet the definition of place of
53 primary use as defined in subdivision twenty of section 11-1101 of this
54 chapter and may give binding notice to the home service provider to
55 change the place of primary use on a prospective basis from the date of
56 notice of determination if:

1 (1) where the determination is made by the commissioner of finance,
2 such commissioner obtains the consent of all affected taxing jurisdic-
3 tions within this state before giving such notice of determination; and

4 (2) before the commissioner of finance or the commissioner of taxation
5 and finance of the state of New York gives such notice of determination,
6 the customer is given an opportunity to demonstrate, in accordance with
7 applicable procedures established by the commissioner of finance making
8 the determination, that that address is the customer's place of primary
9 use.

10 c. Except as provided in subdivision b of this section, a home service
11 provider may treat the address used by the home service provider for
12 purposes of this chapter for the last taxable period beginning before
13 August first, two thousand two, for any customer under a service
14 contract or agreement in effect on July twenty-eighth, two thousand two
15 as that customer's place of primary use for the remaining term of such
16 service contract or agreement, excluding any extension or renewal of
17 such service contract or agreement.

18 § 11-1120 Assignment of place of primary use of telecommunications
19 services to the city. a. If an electronic database meeting the require-
20 ments of subsection a of section one hundred nineteen of title four of
21 the United States Code is provided by the state of New York, or by a
22 designated database provider as defined in subsection three of section
23 one hundred twenty-four of such title, and the requirements of
24 subsection b of such section one hundred nineteen are met, a home
25 service provider shall use that database to determine whether the
26 customer's place of primary use is within the territorial limits of the
27 city and shall reflect changes to such database in accordance with
28 subsection c of such section one hundred nineteen.

29 b. A home service provider using the data contained in an electronic
30 database described in subdivision a of this section shall be held harm-
31 less from any tax liability that otherwise would be due under this chap-
32 ter solely as a result of any error or omission in such database
33 provided the home service provider has properly reflected changes to
34 such database in accordance with subsection c of section one hundred
35 nineteen of title four of the United States Code.

36 c. (1) If no electronic database is provided as described in subdivi-
37 sion a of this section, a home service provider shall be held harmless
38 from any tax liability under this chapter that otherwise would be due
39 solely as a result of an assignment of a street address to an incorrect
40 taxing jurisdiction if, subject to subdivision d of this section, the
41 home service provider employs an enhanced zip code to assign each street
42 address to a specific taxing jurisdiction for each level of taxing
43 jurisdiction and exercises due diligence at each level of taxing juris-
44 diction to ensure that each such street address is assigned to the
45 correct taxing jurisdiction. If an enhanced zip code overlaps boundaries
46 of taxing jurisdictions of the same level, the home service provider
47 must designate one specific jurisdiction within such enhanced zip code
48 for use in taxing the activity for such enhanced zip code for each level
49 of taxing jurisdiction. Any enhanced zip code assignment changed in
50 accordance with subdivision d of this section is deemed to be in compli-
51 ance with this subdivision. For purposes of this subdivision, there is a
52 rebuttable presumption that a home service provider has exercised due
53 diligence if such home service provider demonstrates that it has: (i)
54 expended reasonable resources to implement and maintain an appropriately
55 detailed electronic database of street address assignments to taxing
56 jurisdictions; (ii) implemented and maintained reasonable internal

1 controls to promptly correct misassignments of street addresses to
2 taxing jurisdictions; and (iii) used all reasonably obtainable and
3 usable data pertaining to municipal annexations, incorporations, reor-
4 ganizations and any other changes in jurisdictional boundaries that
5 materially affect the accuracy of such database.

6 (2) Paragraph one of this subdivision applies to a home service
7 provider that is in compliance with the requirements of such paragraph
8 until the later of: (i) eighteen months after the nationwide standard
9 numeric code described in subsection (a) of section one hundred nineteen
10 of title four of the United States Code has been approved by the feder-
11 ation of tax administrators and the multistate tax commission; or (ii)
12 six months after the state of New York or a designated database provider
13 provides a database as prescribed in subdivision a of this section.

14 d. The commissioner of finance, or the commissioner of taxation and
15 finance of the state of New York on behalf of the commissioner of
16 finance, may determine that the assignment of a street address to a
17 taxing jurisdiction by a home service provider under subdivision c of
18 this section does not reflect the correct taxing jurisdiction and give
19 binding notice to the home service provider to change the assignment on
20 a prospective basis from the date of notice of determination if: (1)
21 where the determination is made by the commissioner of finance, such
22 commissioner obtains the consent of all affected taxing jurisdictions
23 within this state before giving such notice of determination; and (2)
24 the home service provider is given an opportunity to demonstrate in
25 accordance with applicable procedures established by the commissioner of
26 finance making the determination that the assignment reflects the
27 correct taxing jurisdiction.

28 CHAPTER 12

29 HORSE RACE ADMISSIONS TAX

30 § 11-1201 Definitions. When used in this chapter the following terms
31 shall mean or include:

32 1. "Racing corporation or association." A racing corporation or
33 association or other person owning or operating race meeting grounds or
34 enclosures located wholly or partly within the city of Staten Island,
35 and/or a racing corporation or association or other person conducting
36 race meetings at such grounds or enclosures.

37 2. "Person." Includes an individual, partnership, society, associ-
38 ation, joint-stock company, corporation, estate, receiver, trustee,
39 assignee, referee, or any other person acting in a fiduciary or repre-
40 sentative capacity, whether appointed by a court or otherwise, and any
41 combination of individuals.

42 3. "Return." Includes any return filed or required to be filed as
43 herein provided.

44 4. "Comptroller." The comptroller of the city.

45 5. "Commissioner of finance." The commissioner of finance of the
46 city.

47 6. "Admissions." The charge required to be paid by patrons for
48 admission to a running horse race meeting, including any charge required
49 to be paid by such patrons for admission to the clubhouse or other
50 special facilities within the race meeting grounds or enclosure at which
51 the running race meeting is conducted.

52 7. "Tax appeals tribunal." The tax appeals tribunal established by
53 section one hundred sixty-eight of the charter of the preceding munici-
54 pality as it existed January first, nineteen hundred ninety-four.

1 § 11-1202 Imposition of tax. A tax is hereby imposed on all admis-
2 sions to running horse race meetings conducted at race meeting grounds
3 or enclosures located wholly or partly within the city of Staten Island
4 at the rate of three percent of the admission price. The racing associ-
5 ation or corporation conducting a running horse race meeting shall, in
6 addition to the admission price, collect such tax on all tickets sold or
7 otherwise disposed of to patrons for admission with the sole exception
8 of those issued free passes, cards or badges in accordance with the
9 specific authority of the laws of the state of New York. In case of
10 failure to collect such tax the tax shall be imposed on the racing
11 corporation or association conducting such meeting.

12 § 11-1203 Payment of the tax. a. The tax imposed by this chapter
13 shall be paid by the racing corporation or association to the commis-
14 sioner of finance daily after each day of each race meeting, by deposit-
15 ing it to the account of the city in such bank or banks as may be desig-
16 nated by the city in accordance with the provisions of section four
17 hundred twenty-one of the charter of the preceding municipality as it
18 existed January first, nineteen hundred ninety-four or at such regular
19 intervals as the commissioner of finance may require.

20 b. The amount of the tax paid on admissions pursuant to this chapter
21 shall be the property of the city of Staten Island and shall be held by
22 the racing corporation or association as trustee for and on account of
23 the city of Staten Island and the racing corporation or association
24 shall be liable for the tax. Officers of the racing corporation or
25 association shall be personally liable for the tax collected or required
26 to be collected hereunder.

27 c. Every racing corporation or association conducting running horse
28 race meetings at race meeting grounds or enclosures located wholly or
29 partly within the city of Staten Island shall, on or before April first,
30 nineteen hundred fifty-two and annually thereafter, before the opening
31 of any race meeting in each year, execute and file with the commissioner
32 of finance a bond issued by a surety company authorized to transact
33 business in this state and approved by the superintendent of insurance
34 of this state as to solvency and responsibility in an amount sufficient
35 to secure the payment of the taxes and/or penalties and interest due or
36 which may become due pursuant to this section, to be fixed by the
37 commissioner of finance.

38 § 11-1204 Returns. a. Every racing corporation or association
39 shall file with the commissioner of finance daily after each day of each
40 race meeting or at such regular intervals as the commissioner of finance
41 may require and upon such forms as shall be prescribed by the commis-
42 sioner of finance a return showing the taxes collected pursuant to this
43 chapter and the number of persons admitted to meetings conducted by the
44 racing corporation or association during the periods covered by the
45 return, together with any and all other information which the commis-
46 sioner of finance shall require to be included and reported in such
47 return. The commissioner of finance may require at any time supple-
48 mental or amended returns of such additional information or data as he
49 or she may specify.

50 b. Every return required pursuant to this section shall have annexed
51 thereto an affidavit of an officer of the racing corporation or associ-
52 ation to the effect that the statements contained therein are true.

53 § 11-1205 Records to be kept and audits by commissioner of finance.
54 Every racing corporation or association shall keep such records as may
55 be prescribed by the commissioner of finance, of all admissions and
56 taxes collected pursuant to this chapter. Such records shall be avail-

1 able for inspection and examination at any time upon demand by the
2 commissioner of finance or the commissioner's duly authorized agents or
3 employees, and such records shall be preserved for a period of three
4 years, except that the commissioner of finance may consent to their
5 destruction within that period, and may require that they be kept longer
6 than three years.

7 § 11-1206 Determination of tax. If a return required by this chapter
8 is not filed, or if a return when filed is incorrect or insufficient the
9 amount of tax due shall be determined by the commissioner of finance
10 from such information as may be obtainable and, if necessary, the tax
11 may be estimated on the basis of external indices, such as number of
12 race meetings held, admissions, paid attendance, and/or other factors.
13 Notice of such determination shall be given to the person liable for the
14 collection and/or payment of the tax. Such determination shall finally
15 and irrevocably fix the tax unless the person against whom it is
16 assessed, within ninety days after giving the notice of such determi-
17 nation, or, if the commissioner of finance has established a concil-
18 iation procedure pursuant to section 11-124 of this title and the
19 taxpayer has requested a conciliation conference in accordance there-
20 with, within ninety days from the mailing of a conciliation decision or
21 the date of the commissioner's confirmation of the discontinuance of the
22 conciliation proceeding, both (1) serves a petition upon the commis-
23 sioner of finance and (2) files a petition with the tax appeals tribunal for
24 a hearing, or unless the commissioner of finance of his or her own
25 motion shall redetermine the same. Such hearing and any appeal to the
26 tax appeals tribunal sitting en banc from the decision rendered in such
27 hearing shall be conducted in the manner and subject to the requirements
28 prescribed by the tax appeals tribunal pursuant to sections one hundred
29 sixty-eight through one hundred seventy-two of the charter of the
30 preceding municipality as it existed January first, nineteen hundred
31 ninety-four. After such hearing the tax appeals tribunal shall give
32 notice of its decision to the person liable for the tax and to the
33 commissioner of finance. A decision of the tax appeals tribunal sitting
34 en banc shall be reviewable for error, illegality or unconstitutionality
35 or any other reason whatsoever by a proceeding under article seventy-
36 eight of the civil practice law and rules if application therefor is
37 made to the supreme court by the person against whom the tax was
38 assessed within four months after the giving of the notice of such tax
39 appeals tribunal decision. A proceeding under article seventy-eight of
40 the civil practice law and rules shall not be instituted by a person
41 liable for the tax unless the amount of any tax sought to be reviewed
42 with interest and penalties thereon, if any, shall be first deposited
43 with the commissioner of finance and there shall be filed with the
44 commissioner of finance an undertaking, issued by a surety company
45 authorized to transact business in this state and approved by the super-
46 intendent of insurance of this state as to solvency and responsibility,
47 in such amount as a justice of the supreme court shall approve to the
48 effect that if such proceeding be dismissed or the tax confirmed, such
49 person will pay all costs and charges which may accrue in the prose-
50 cution of the proceeding, or at the option of such person such undertak-
51 ing filed with the commissioner of finance may be in a sum sufficient to
52 cover the taxes, penalties and interest thereon stated in such decision
53 plus the costs and charges which may accrue against it in the prose-
54 cution of the proceeding, in which event such person shall not be
55 required to deposit such taxes, penalties and interest as a condition
56 precedent to the application.

1 § 11-1207 Refunds. a. In the manner provided in this section the
2 commissioner of finance shall refund or credit, without interest, any
3 tax, penalty or interest erroneously, illegally, or unconstitutionally
4 collected or paid if application to the commissioner of finance for such
5 refund shall be made within one year from the payment thereof. Whenever
6 a refund or credit is made or denied by the commissioner of finance, he
7 or she shall state his or her reason therefor and give notice thereof to
8 the applicant in writing. The commissioner of finance may, in lieu of
9 any refund required to be made, allow credit therefor on payments due
10 from the applicant.

11 b. Any determination of the commissioner of finance denying a refund
12 or credit pursuant to subdivision a of this section shall be final and
13 irrevocable unless the applicant for such refund or credit, within nine-
14 ty days from the mailing of notice of such determination, or, if the
15 commissioner of finance has established a conciliation procedure, pursu-
16 ant to section 11-124 of this title and the applicant has requested a
17 conciliation conference in accordance therewith, within ninety days of
18 the mailing of a conciliation decision or the date of the commissioner's
19 confirmation of the discontinuance of the conciliation proceeding, both
20 (1) serves a petition upon the commissioner of finance and (2) files a
21 petition with the tax appeals tribunal for a hearing. Such petition for
22 a refund or credit, made as provided under this section, shall be deemed
23 an application for a revision of any tax, penalty or interest complained
24 of. Such hearing and any appeal to the tax appeals tribunal sitting en
25 banc from the decision rendered in such hearing shall be conducted in
26 the manner and subject to the requirements prescribed by the tax appeals
27 tribunal pursuant to section one hundred sixty-eight through one hundred
28 seventy-two of the charter of the preceding municipality as it existed
29 January first, nineteen hundred ninety-four. After such hearing, the tax
30 appeals tribunal shall give notice of its decision to the applicant and
31 to the commissioner of finance. The applicant shall be entitled to
32 institute a proceeding pursuant to article seventy-eight of the civil
33 practice law and rules to review a decision of the tax appeals tribunal
34 sitting en banc, provided such proceeding is instituted within four
35 months after the giving of the notice of such decision, and provided, in
36 the case of an application by a person liable for the tax, that a final
37 determination of tax due was not previously made. Such a proceeding
38 shall not be instituted by a person liable for the tax unless an under-
39 taking is filed with the commissioner of finance in such amount and with
40 such sureties as a justice of the supreme court shall approve to the
41 effect that if such proceeding be dismissed or the tax confirmed, such
42 person will pay all costs and charges which may accrue in the prose-
43 cution of such proceeding.

44 c. A person shall not be entitled to a revision, refund or credit
45 under this section of a tax, interest or penalty which has been deter-
46 mined to be due pursuant to the provisions of section 11-1206 of this
47 chapter where such person has had a hearing or an opportunity for a
48 hearing, as provided in said section, or has failed to avail himself or
49 herself of the remedies therein provided. No refund or credit shall be
50 made of a tax, interest or penalty paid after a determination by the
51 commissioner of finance made pursuant to section 11-1206 of this chapter
52 unless it be found that such determination was erroneous, illegal or
53 unconstitutional or otherwise improper, by the tax appeals tribunal
54 after a hearing or of the commissioner's own motion, or, if such tax
55 appeals tribunal affirms in whole or in part the determination of the
56 commissioner of finance, in a proceeding under article seventy-eight of

1 the civil practice law and rules, pursuant to the provisions of said
2 section, in which event refund or credit without interest shall be made
3 of the tax, interest or penalty found to have been overpaid.

4 § 11-1208 Reserves. In cases where a person has applied for a
5 refund and has instituted a proceeding under article seventy-eight of
6 the civil practice law and rules to review a determination adverse to
7 such person on his or her application for refund, the comptroller shall
8 set up appropriate reserves to meet any decision adverse to the city.

9 § 11-1209 Remedies exclusive. The remedies provided by sections
10 11-1206 and 11-1207 of this chapter shall be exclusive remedies avail-
11 able to any person for the review of tax liability imposed by this chap-
12 ter, and no determination or proposed determination of tax or determi-
13 nation on any application for refund by the commissioner of finance, nor
14 any decision by the tax appeals tribunal or any of its administrative
15 law judges, shall be enjoined or reviewed by an action for declaratory
16 judgment, an action for money had and received or by any action or
17 proceeding other than, in the case of a decision by the tax appeals
18 tribunal sitting en banc, a proceeding in the nature of a certiorari
19 proceeding under article seventy-eight of the civil practice law and
20 rules; provided, however, that such person may proceed by declaratory
21 judgment if such person institutes suit within ninety days after a defi-
22 ciency assessment is made and pays the amount of the deficiency assess-
23 ment to the commissioner of finance prior to the institution of such
24 suit and posts a bond for costs as provided in section 11-1206 of this
25 chapter.

26 § 11-1210 Proceedings to recover tax. a. Whenever any racing
27 corporation or association or any of its officers or any other person
28 shall fail to collect and pay over any tax or to pay any tax, penalty or
29 interest imposed by this chapter as therein provided, the corporation
30 counsel shall, upon the request of the commissioner of finance bring or
31 cause to be brought an action to enforce the payment of the same on
32 behalf of the city of Staten Island in any court of the state of New
33 York or of any other state or of the United States. If, however, the
34 commissioner of finance in his or her discretion believes that a person
35 subject to the provisions of this chapter is about to cease business,
36 leave the state or remove or dissipate the assets out of which the tax
37 or penalties might be satisfied, and that any such tax or penalty will
38 not be paid when due, the commissioner of finance may declare such tax
39 or penalty to be immediately due and payable and may issue a warrant
40 immediately.

41 b. As an additional or alternate remedy, the commissioner of finance
42 may issue a warrant, directed to the city sheriff commanding the sheriff
43 to levy upon and sell the real and personal property of the racing
44 corporation or association or its officers or any other person which may
45 be found within the city, for the payment of the amount thereof, with
46 any penalties and interest, and the cost of executing the warrant, and
47 to return such warrant to the commissioner of finance and to pay to the
48 commissioner of finance the money collected by virtue thereof within
49 sixty days after the receipt of such warrant. The city sheriff shall
50 within five days after the receipt of the warrant file with the county
51 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
52 ment docket the name of the person mentioned in the warrant and the
53 amount of the tax, penalties and interest for which the warrant is
54 issued and the date when such copy is filed. Thereupon the amount of
55 such warrant so docketed shall become a lien upon the title to and
56 interest in real and personal property of the person against whom the

1 warrant is issued. The city sheriff shall then proceed upon the warrant
2 in the same manner, and with like effect, as that provided by law in
3 respect to executions issued against property upon judgments of a court
4 of record and for services in executing the warrants the city sheriff
5 shall be entitled to the same fees, which the city sheriff may collect
6 in the same manner. In the discretion of the commissioner of finance a
7 warrant of like terms, force and effect may be issued and directed to
8 any officer or employee of the department of finance, and in the
9 execution thereof such officer or employee shall have all the powers
10 conferred by law upon sheriffs, but shall be entitled to no fee or
11 compensation in excess of the actual expenses paid in the performance of
12 such duty. If a warrant is returned not satisfied in full, the commis-
13 sioner of finance may from time to time issue new warrants and shall
14 also have the same remedies to enforce the amount due thereunder as if
15 the city had recovered judgment therefor and execution thereon had been
16 returned unsatisfied.

17 c. Whenever a corporation or association shall make a sale, transfer
18 or assignment in bulk or any part or the whole of its race meeting
19 grounds or enclosures and the building and structures thereon, or its
20 lease, license or other agreement or right to possess or operate such
21 race meeting grounds or enclosures or of the equipment, machinery,
22 fixtures or supplies, or of the said race meeting grounds or enclosures
23 and the building and structures thereon, or lease, license or other
24 agreement or right to possess or operate such race meeting grounds or
25 enclosures, and the equipment, machinery, fixtures or supplies pertain-
26 ing to the conduct or the operation of the said race meeting grounds or
27 enclosures, otherwise than in the ordinary course of trade and in the
28 regular prosecution of said business, the purchaser, transferee or
29 assignee shall at least ten days before taking possession of such race
30 meeting grounds or enclosures and the building and structures thereon,
31 or lease, license or other agreement or right to possess or operate such
32 race meeting grounds or enclosures or the equipment, machinery, fixtures
33 or supplies, or of the said race meeting grounds or enclosures and the
34 building and structures thereon, or lease, license or other agreement or
35 right to possess or operate such race meeting grounds or enclosures, and
36 the equipment, machinery, fixtures or supplies or paying thereof, notify
37 the commissioner of finance by registered mail of the proposed sale and
38 of the price, terms and conditions thereof whether or not the seller,
39 transferor or assignor, has represented to, or informed the purchaser,
40 transferee or assignee that it owes any tax pursuant to this chapter and
41 whether or not the purchaser, transferee or assignee has knowledge that
42 such taxes are owing, and whether any such taxes are in fact owing.

43 Whenever the purchaser, transferee or assignee shall fail to give
44 notice to the commissioner of finance as required by the opening para-
45 graph of this subdivision, or whenever the commissioner of finance shall
46 inform the purchaser, transferee or assignee that a possible claim for
47 such tax or taxes exists, any sums of money, property or choses in
48 action, or other consideration, which the purchaser, transferee or
49 assignee is required to transfer over to the seller, transferor or
50 assignor shall be subject to a first priority right and lien for any
51 such taxes theretofore or thereafter determined to be due from the sell-
52 er, transferor or assignor to the city, and the purchaser, transferee or
53 assignee is forbidden to transfer to the seller, transferor or assignor
54 any such sums of money, property or choses in action to the extent of
55 the amount of the city's claim. For failure to comply with the
56 provisions of this subdivision, the purchaser, transferee or assignee,

1 in addition to being subject to the liabilities and remedies imposed
2 under the provisions of former article six of the uniform commercial
3 code, shall be personally liable for the payment to the city of any such
4 taxes theretofore or thereafter determined to be due to the city from
5 the seller, transferor or assignor, and such liability may be assessed
6 and enforced in the same manner as the liability for tax under this
7 chapter.

8 d. The commissioner of finance, if he or she finds that the interests
9 of the city will not thereby be jeopardized, and upon such conditions as
10 the commissioner of finance may require, may release any property from
11 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
12 tions to tax, penalties and interest filed pursuant to subdivision b of
13 this section, and such release or vacating of the warrant may be
14 recorded in the office of any recording officer in which such warrant
15 has been filed. The clerk shall thereupon cancel and discharge as of the
16 original date of docketing the vacated warrant.

17 § 11-1211 General powers of the commissioner of finance. In addition
18 to the powers granted to the commissioner of finance in this chapter,
19 such commissioner is hereby authorized and empowered:

20 1. To make, adopt and amend rules and regulations appropriate to the
21 carrying out of this chapter and the purposes thereof;

22 2. To extend, for cause shown, the time for filing any return for a
23 period not exceeding thirty days; and to compromise disputed claims in
24 connection with the taxes hereby imposed;

25 3. To request information from the racing commission and the tax
26 commission of the state of New York, or any other state or the treasury
27 department of the United States relative to any person; and to afford
28 information to such commission or such treasury department relative to
29 any person, any other provision of this chapter to the contrary notwith-
30 standing;

31 4. To delegate his or her functions under this section to a deputy
32 commissioner of finance or any employee or employees of the department
33 of finance;

34 5. To prescribe methods for determining the amount of the admissions
35 and for determining the tax;

36 6. To require racing corporations or associations to keep detailed
37 records of all race meetings and all attendance thereat, and to furnish
38 such information upon request to the commissioner of finance;

39 7. To require that the amount of the tax be printed, separate from
40 the price of admission, on tickets of admission.

41 § 11-1212 Administration of oaths and compelling testimony. a. The
42 commissioner of finance, his or her employees or agents duly designated
43 and authorized by the commissioner of finance, the tax appeals tribunal
44 and any of its duly designated and authorized employees or agents shall
45 have power to administer oaths and take affidavits in relation to any
46 matter or proceeding in the exercise of their powers and duties under
47 this chapter. The commissioner of finance and the tax appeals tribunal
48 shall have power to subpoena and require the attendance of witnesses and
49 the production of books, papers and documents to secure information
50 pertinent to the performance of the duties of the commissioner or of the
51 tax appeals tribunal under this section and of the enforcement of this
52 chapter and to examine them in relation thereto, and to issue commis-
53 sions for the examination of witnesses who are out of the state or
54 unable to attend before the commissioner of finance or the tax appeals
55 tribunal or excused from attendance.

1 b. A justice of the supreme court either in court or at chambers shall
2 have power summarily to enforce by proper proceedings the attendance and
3 testimony of witnesses and the production and examination of books,
4 papers and documents called for by the subpoena of the commissioner of
5 finance or the tax appeals tribunal under this chapter.

6 c. Cross-reference; criminal penalties. For failure to obey subpoenas
7 or for testifying falsely, see section 11-4007 of this title; for
8 supplying false or fraudulent information, see section 11-4009 of this
9 title.

10 d. The officers who serve the summons or subpoena of the commissioner
11 of finance or the tax appeals tribunal and witnesses attending in
12 response thereto shall be entitled to the same fees as are allowed to
13 officers and witnesses in civil cases in courts of record, except as
14 herein otherwise provided. Such officers shall be the city sheriff and
15 his or her duly appointed deputies, or any officers or employees of the
16 department of finance or the tax appeals tribunal, designated to serve
17 such process.

18 § 11-1213 Interest and penalties. (a) Interest on underpayments. If
19 any amount of tax is not paid over or paid on or before the last date
20 prescribed for payment, without regard to any extension of time granted
21 for payment, interest on such amount at the rate set by the commissioner
22 of finance pursuant to subdivision (g) of this section, or, if no rate
23 is set, at the rate of seven and one-half percent per annum, shall be
24 paid for the period from such last date to the date of payment. In
25 computing the amount of interest to be paid, such interest shall be
26 compounded daily. Interest under this subdivision shall not be paid if
27 the amount thereof is less than one dollar.

28 (b) (1) Failure to file return. (A) In case of failure to file a
29 return under this chapter on or before the prescribed date, determined
30 with regard to any extension of time for filing, unless it is shown that
31 such failure is due to reasonable cause and not due to willful neglect,
32 there shall be added to the amount required to be shown as tax on such
33 return five percent of the amount of such tax if the failure is for not
34 more than one month, with an additional five percent for each additional
35 month or fraction thereof during which such failure continues, not
36 exceeding twenty-five percent in the aggregate.

37 (B) In the case of a failure to file a return of tax within sixty days
38 of the date prescribed for filing of such return, determined with regard
39 to any extension of time for filing, unless it is shown that such fail-
40 ure is due to reasonable cause and not due to willful neglect, the addi-
41 tion to tax under subparagraph (A) of this paragraph shall not be less
42 than the lesser of one hundred dollars or one hundred percent of the
43 amount required to be shown as tax on such return.

44 (C) For purposes of this paragraph, the amount of tax required to be
45 shown on the return shall be reduced by the amount of any part of the
46 tax which is paid on or before the date prescribed for payment of the
47 tax and by the amount of any credit against the tax which may be claimed
48 upon the return.

49 (2) Failure to pay tax shown on return. In case of failure to pay the
50 amount shown as tax on a return required to be filed under this chapter
51 on or before the prescribed date, determined with regard to any exten-
52 sion of time for payment, unless it is shown that such failure is due to
53 reasonable cause and not due to willful neglect, there shall be added to
54 the amount shown as tax on such return one-half of one percent of the
55 amount of such tax if the failure is not for more than one month, with
56 an additional one-half of one percent for each additional month or frac-

tion thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-1206 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such para-

1 graph one which is attributable to fraud, for the period beginning on
2 the last day prescribed by law for payment of such underpayment, deter-
3 mined without regard to any extension, and ending on the date of the
4 assessment of the tax, or, if earlier, the date of the payment of the
5 tax.

6 (3) The penalty under this subdivision shall be in lieu of any other
7 addition to tax imposed by subdivision (b) or (c) of this section.

8 (e) Additional penalty. Any person who, with fraudulent intent, shall
9 fail to pay any tax imposed by this chapter, or to make, render, sign or
10 certify any return, or to supply any information within the time
11 required by or under this chapter, shall be liable for a penalty of not
12 more than one thousand dollars, in addition to any other amounts
13 required under this chapter to be imposed, assessed and collected by the
14 commissioner of finance. The commissioner of finance shall have the
15 power, in his or her discretion, to waive, reduce or compromise any
16 penalty under this subdivision.

17 (f) The interest and penalties imposed by this section shall be paid
18 and disposed of in the same manner as other revenues from this chapter.
19 Unpaid interest and penalties may be enforced in the same manner as the
20 tax imposed by this chapter.

21 (g)(1) Authority to set interest rates. The commissioner of finance
22 shall set the rate of interest to be paid pursuant to subdivision (a) of
23 this section, but if no such rate of interest is set, such rate shall be
24 deemed to be set at seven and one-half percent per annum. Such rate
25 shall be the rate prescribed in paragraph two of this subdivision but
26 shall not be less than seven and one-half percent per annum. Any such
27 rate set by the commissioner of finance shall apply to taxes, or any
28 portion thereof, which remain or become due on or after the date on
29 which such rate becomes effective and shall apply only with respect to
30 interest computed or computable for periods or portions of periods
31 occurring in the period in which such rate is in effect.

32 (2) General rule. The rate of interest set under this subdivision
33 shall be the sum of (i) the federal short-term rate as provided under
34 paragraph three of this subdivision, plus (ii) seven percentage points.

35 (3) Federal short-term rate. For purposes of this subdivision:

36 (A) The federal short-term rate for any month shall be the federal
37 short-term rate determined by the United States secretary of the treas-
38 ury during such month in accordance with subsection (d) of section
39 twelve hundred seventy-four of the internal revenue code for use in
40 connection with section six thousand six hundred twenty-one of the
41 internal revenue code. Any such rate shall be rounded to the nearest
42 full percent, or, if a multiple of one-half of one percent, such rate
43 shall be increased to the next highest full percent.

44 (B) Period during which rate applies.

45 (i) In general. Except as provided in clause (ii) of this subpara-
46 graph, the federal short-term rate for the first month in each calendar
47 quarter shall apply during the first calendar quarter beginning after
48 such month.

49 (ii) Special rule for the month of September, nineteen hundred eight-
50 y-nine. The federal short-term rate for the month of April, nineteen
51 hundred eighty-nine shall apply with respect to setting the rate of
52 interest for the month of September, nineteen hundred eighty-nine.

53 (4) Publication of interest rate. The commissioner of finance shall
54 cause to be published in the City Record, and give other appropriate
55 general notice of, the interest rate to be set under this subdivision no
56 later than twenty days preceding the first day of the calendar quarter

1 during which such interest rate applies. The setting and publication of
2 such interest rate shall not be included within paragraph (a) of subdivi-
3 sion five of section one thousand forty-one of the city charter of the
4 preceding municipality as it existed January first, nineteen hundred
5 ninety-four relating to the definition of a rule.

6 (h) Miscellaneous. (1) Officers of a racing corporation or association
7 shall be personally liable for the tax collected or required to be
8 collected under this chapter, and subject to the penalties imposed by
9 this section.

10 (2) The certificate of the commissioner of finance to the effect that
11 a tax has not been paid, that a return or bond has not been filed, or
12 that information has not been supplied pursuant to the provisions of
13 this chapter, shall be presumptive evidence thereof.

14 (3) Cross-reference: For criminal penalties, see chapter forty of this
15 title.

16 § 11-1214 Returns to be secret. a. Except in accordance with proper
17 judicial order, or as otherwise provided by law, it shall be unlawful
18 for the commissioner of finance or the tax appeals tribunal or any offi-
19 cer or employee of the department of finance to divulge or make known in
20 any manner any of the information relating to the business of any person
21 contained in any return required under this chapter. The officers
22 charged with the custody of such returns shall not be required to
23 produce any of them or evidence of anything contained in them in any
24 action or proceeding in any court, except on behalf of the commissioner
25 of finance in an action or proceeding under the provisions of this chap-
26 ter, or on behalf of any party to any action or proceeding under the
27 provisions of this chapter, when the returns or facts shown thereby are
28 directly involved in such action or proceeding, in either of which
29 events the courts may require the production of, and may admit in
30 evidence, so much of said returns or of the facts shown thereby, as are
31 pertinent to the action or proceeding and no more. The commissioner of
32 finance may, nevertheless, publish a copy or a summary of any determi-
33 nation or decision rendered after a formal hearing held pursuant to
34 section 11-1206 or 11-1207 of this chapter. Nothing in this section
35 shall be construed to prohibit the delivery to a person or such person's
36 duly authorized representative of a certified copy of any return filed
37 by such person nor to prohibit the publication of statistics so classi-
38 fied as to prevent the identification of particular returns and the
39 items thereof, or the inspection by the corporation counsel or other
40 legal representatives of the city, or by the district attorney of Rich-
41 mond county, of the return of any person who shall bring action to set
42 aside or review the tax based thereon, or against whom an action or
43 proceeding has been instituted for the collection of a tax or penalty.
44 Returns shall be preserved for three years and thereafter until the
45 commissioner of finance permits them to be destroyed.

46 b. (1) Any officer or employee of the city who willfully violates the
47 provisions of subdivision a of this section shall be dismissed from
48 office and be incapable of holding any public office in this city for a
49 period of five years thereafter.

50 (2) Cross-reference: For criminal penalties, see chapter forty of this
51 title.

52 c. This section shall be deemed a state statute for purposes of para-
53 graph (a) of subdivision two of section eighty-seven of the public offi-
54 cers law.

55 d. Notwithstanding anything in subdivision a of this section to the
56 contrary, if a taxpayer has petitioned the tax appeals tribunal for

1 administrative review as provided in section one hundred seventy of the
2 charter of the preceding municipality as it existed January first, nine-
3 teen hundred ninety-four, the commissioner of finance shall be author-
4 ized to present to the tribunal any report or return of such taxpayer,
5 or any information contained therein or relating thereto, which may be
6 material or relevant to the proceeding before the tribunal. The tax
7 appeals tribunal shall be authorized to publish a copy or a summary of
8 any decision rendered pursuant to section one hundred seventy-one of the
9 charter of the preceding municipality as it existed January first, nine-
10 teen hundred ninety-four.

11 § 11-1215 Notices and limitations of time. a. Any notice author-
12 ized or required under the provisions of this chapter may be given by
13 mailing the same to the person for whom it is intended in a postpaid
14 envelope addressed to such person at the address given in the last
15 return filed by such person pursuant to the provisions of this chapter
16 or in any application made by such person or if no return has been filed
17 or application made, then to such address as may be obtainable. The
18 mailing of such notice shall be presumptive evidence of the receipt of
19 the same by the person to whom addressed. Any period of time which is
20 determined according to the provisions of this chapter by the giving of
21 notice shall commence to run from the date of mailing of such notice.

22 b. The provisions of the civil practice law and rules or any other
23 law relative to limitations of time for the enforcement of a civil reme-
24 dy shall not apply to any proceeding or action taken by the city to
25 levy, appraise, assess, determine or enforce the collection of any tax
26 or penalty provided by this chapter. However, except in the case of a
27 wilfully false or fraudulent return with intent to evade the tax, no
28 assessment of additional tax shall be made after the expiration of more
29 than three years from the date of the filing of a return, provided, that
30 where no return has been filed as provided by law the tax may be
31 assessed at any time.

32 c. Where, before the expiration of the period prescribed under this
33 section for the assessment of an additional tax, a person has consented
34 in writing that such period be extended, the amount of such additional
35 tax due may be determined at any time within such extended period. The
36 period so extended may be further extended by subsequent consents in
37 writing made before the expiration of the extended period.

38 d. If any return, claim, statement, notice, application, or other
39 document required to be filed, or any payment required to be made, with-
40 in a prescribed period or on or before a prescribed date under authority
41 of any provision of this chapter is, after such period or such date,
42 delivered by United States mail to the commissioner of finance, the tax
43 appeals tribunal, bureau, office, officer or person with which or with
44 whom such document is required to be filed, or to which or to whom such
45 payment is required to be made, the date of the United States postmark
46 stamped on the envelope shall be deemed to be the date of delivery. This
47 subdivision shall apply only if the postmark date falls within the
48 prescribed period or on or before the prescribed date for the filing of
49 such document, or for making the payment, including any extension grant-
50 ed for such filing or payment, and only if such document or payment was
51 deposited in the mail, postage prepaid, properly addressed to the
52 commissioner of finance, bureau, office, officer or person with which or
53 with whom the document is required to be filed or to which or to whom
54 such payment is required to be made. If any document is sent by United
55 States registered mail, such registration shall be prima facie evidence
56 that such document was delivered to the commissioner of finance, the tax

1 appeals tribunal, bureau, office, officer or person to which or to whom
2 addressed, and the date of registration shall be deemed the postmark
3 date. The commissioner of finance or, where relevant, the tax appeals
4 tribunal is authorized to provide by regulation the extent to which the
5 provisions of the preceding sentence with respect to prima facie
6 evidence of delivery and the postmark date shall apply to certified
7 mail. Except as provided in subdivision f of this section, this subdivi-
8 sion shall apply in the case of postmarks not made by the United States
9 postal service only if and to the extent provided by regulation of the
10 commissioner of finance or, where relevant, the tax appeals tribunal.

11 e. When the last day prescribed under authority of this chapter,
12 including any extension of time, for performing any act falls on a
13 Saturday, Sunday or legal holiday in the state, the performance of such
14 act shall be considered timely if it is performed on the next succeeding
15 day which is not a Saturday, Sunday or legal holiday.

16 f. (1) Any reference in subdivision d of this section to the United
17 States mail shall be treated as including a reference to any delivery
18 service designated by the secretary of the treasury of the United States
19 pursuant to section seventy-five hundred two of the internal revenue
20 code and any reference in subdivision d of this section to a United
21 States postmark shall be treated as including a reference to any date
22 recorded or marked in the manner described in section seventy-five
23 hundred two of the internal revenue code by a designated delivery
24 service. If the commissioner of finance finds that any delivery service
25 designated by such secretary is inadequate for the needs of the city,
26 the commissioner of finance may withdraw such designation for purposes
27 of this title. The commissioner of finance may also designate additional
28 delivery services meeting the criteria of section seventy-five hundred
29 two of the internal revenue code for purposes of this title, or may
30 withdraw any such designation if the commissioner of finance finds that
31 a delivery service so designated is inadequate for the needs of the
32 city. Any reference in subdivision d of this section to the United
33 States mail shall be treated as including a reference to any delivery
34 service designated by the commissioner of finance and any reference in
35 subdivision d of this section to a United States postmark shall be
36 treated as including a reference to any date recorded or marked in the
37 manner described in section seventy-five hundred two of the internal
38 revenue code by a delivery service designated by the commissioner of
39 finance. Notwithstanding the provisions of this paragraph, any with-
40 drawal of designation or additional designation by the commissioner of
41 finance shall not be effective for purposes of service upon the tax
42 appeals tribunal, unless and until such withdrawal of designation or
43 additional designation is ratified by the president of the tax appeals
44 tribunal.

45 (2) Any equivalent of registered or certified mail designated by the
46 United States secretary of the treasury, or as may be designated by the
47 commissioner of finance pursuant to the same criteria used by such
48 secretary for such designations pursuant to section seventy-five hundred
49 two of the internal revenue code, shall be included within the meaning
50 of registered or certified mail as used in subdivision d of this
51 section. If the commissioner of finance finds that any equivalent of
52 registered or certified mail designated by such secretary or the commis-
53 sioner of finance is inadequate for the needs of the city, the commis-
54 sioner of finance may withdraw such designation for purposes of this
55 title. Notwithstanding the foregoing, any withdrawal of designation or
56 additional designation by the commissioner of finance shall not be

1 effective for purposes of service upon the tax appeals tribunal, unless
2 and until such withdrawal of designation or additional designation is
3 ratified by the president of the tax appeals tribunal.

4 § 11-1216 Disposition of revenues. All revenues resulting from the
5 imposition of the tax under this chapter at race meeting grounds or
6 enclosures located wholly within the city of Staten Island shall be
7 credited and deposited in the general fund of the city.

8 CHAPTER 13
9 CIGARETTE TAX

10 § 11-1301 Definitions. When used in this chapter the following words
11 shall have the meanings herein indicated:

12 1. "Cigarette." (a) Any roll for smoking made wholly or in part of
13 tobacco or any other substance wrapped in paper or in any other
14 substance not containing tobacco, and (b) any roll for smoking made
15 wholly or in part of tobacco wrapped in any substance containing tobacco
16 which, because of its appearance, the type of tobacco used in the
17 filler, or its packaging and labeling, is likely to be offered to, or
18 purchased by, consumers as a cigarette described in paragraph (a) of
19 this subdivision. However, a roll will not be considered to be a ciga-
20 rette for purposes of paragraph (b) of this subdivision if it is not
21 treated as a cigarette for federal excise tax purposes under the appli-
22 cable federal statute in effect on April first, two thousand eight.
23 "Cigarette" shall not include a research tobacco product.

24 2. "Person." Any individual, partnership, society, association, joint-
25 stock company, corporation, estate, receiver, trustee, assignee, referee
26 or any other person acting in a fiduciary or representative capacity,
27 whether appointed by a court or otherwise, and any combination of indi-
28 viduals.

29 3. "Sale or purchase." Any transfer of title or possession or both,
30 exchange or barter, conditional or otherwise, in any manner or by any
31 means whatsoever or any agreement therefor.

32 4. "Use." Any exercise of a right or power, actual or constructive,
33 and shall include but is not limited to the receipt, storage, or any
34 keeping or retention for any length of time, but shall not include
35 possession for sale by a dealer.

36 5. "Dealer." Any wholesale dealer or retail dealer as defined in
37 subdivisions six and seven of this section.

38 6. "Wholesale dealer." Any person who sells cigarettes or tobacco
39 products to retail dealers or other persons for purposes of resale only,
40 and any person who owns, operates or maintains one or more cigarette
41 vending machines in, at or upon premises owned or occupied by any other
42 person.

43 7. "Retail dealer." Any person other than a wholesale dealer engaged
44 in selling cigarettes or tobacco products. For the purposes of this
45 chapter, the possession or transportation at any one time of five thou-
46 sand or more cigarettes or little cigars, or more than fifty cigars, or
47 more than one pound of loose tobacco, smokeless tobacco, snus or shisha,
48 or any combination thereof, by any person other than a manufacturer, an
49 agent, a licensed wholesale dealer or a person delivering cigarettes or
50 tobacco products in the regular course of business for a manufacturer,
51 an agent or a licensed wholesale or retail dealer, shall be presumptive
52 evidence that such person is a retail dealer.

- 1 8. "Package." The individual package, box or other container in or
2 from which retail sales of cigarettes are normally made or intended to
3 be made.
- 4 9. "Agent." Any person authorized to purchase and affix adhesive or
5 meter stamps under this chapter who is designated as an agent by the
6 commissioner of finance.
- 7 10. "Comptroller." The comptroller of the city.
- 8 11. "Commissioner of finance." The commissioner of finance of the
9 city.
- 10 12. "City." The city of Staten Island.
- 11 13. "Tax appeals tribunal." The tax appeals tribunal established by
12 section one hundred sixty-eight of the charter of the preceding munici-
13 pality as it existed January first, nineteen hundred ninety-four.
- 14 14. "Cigar." Any roll of tobacco for smoking that is wrapped in leaf
15 tobacco or in any substance containing tobacco, with or without a tip or
16 mouthpiece. Cigar does not include a little cigar as defined in this
17 section.
- 18 15. "Little cigar." Any roll of tobacco for smoking that is wrapped in
19 leaf tobacco or in any substance containing tobacco and that weighs no
20 more than four pounds per thousand or has a cellulose acetate or other
21 integrated filter.
- 22 16. "Loose tobacco." Any product that consists of loose leaves or
23 pieces of tobacco that is intended for use by consumers in a pipe, roll-
24 your-own cigarette, or similar product or device.
- 25 17. "Smokeless tobacco." Any tobacco product that consists of cut,
26 ground, powdered, or leaf tobacco and that is intended to be placed in
27 the oral or nasal cavity.
- 28 18. "Snus." Any smokeless tobacco product marketed and sold as snus,
29 and sold in ready-to-use pouches or loose as a moist powder.
- 30 19. "Tobacco product." Any product which contains tobacco that is
31 intended for human consumption, including any component, part, or acces-
32 sory of such product. Tobacco product shall include, but not be limited
33 to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-
34 own tobacco, snus, bidi, snuff, shisha, or dissolvable tobacco product.
35 Tobacco product shall not include cigarettes or any product that has
36 been approved by the United States food and drug administration for sale
37 as a tobacco use cessation product or for other medical purposes and
38 that is being marketed and sold solely for such purposes. "Tobacco
39 products" shall not include research tobacco products.
- 40 20. "Shisha." Any product that contains tobacco and is smoked or
41 intended to be smoked in a hookah or water pipe.
- 42 21. "Research tobacco product." A tobacco product or cigarette that is
43 labeled as a research tobacco product, is manufactured for use in
44 research for health, scientific, or similar experimental purposes, is
45 exclusively used for such purposes by an accredited college, university
46 or hospital, or a researcher affiliated with an accredited college,
47 university or hospital, and is not offered for sale or sold to consumers
48 for any purpose.
- 49 § 11-1302 Imposition of tax. a. There is hereby imposed and shall
50 be paid a tax on:
- 51 1. All cigarettes possessed in the city for sale except as provided
52 in this section;
- 53 2. The use of all cigarettes in the city except as provided in this
54 section;
- 55 3. It is intended that the ultimate incidence of and liability for the
56 tax shall be upon the consumer, and that any agent, distributor or deal-

1 er who shall pay the tax to the commissioner of finance shall collect
2 the tax from the purchaser or consumer. Such tax shall be at the rate of
3 four cents for each ten cigarettes or fraction thereof, provided, howev-
4 er, that if a package of cigarettes contains more than twenty ciga-
5 rettes, the rate of tax on the cigarettes in such package in excess of
6 twenty shall be two cents for each five cigarettes or fraction thereof.
7 Provided further, however, that on and after July second, two thousand
8 two, such tax shall be at the rate of seventy-five cents for each ten
9 cigarettes or fraction thereof, provided, however, that if a package of
10 cigarettes contains more than twenty cigarettes, the rate of tax on the
11 cigarettes in such package in excess of twenty shall be thirty-eight
12 cents for each five cigarettes or fraction thereof. Such tax shall be
13 imposed only once on the same package of cigarettes.

14 b. The tax imposed by this section shall not apply to:

15 1. The use, otherwise than for sale, of four hundred cigarettes or
16 less brought into the city, on or in possession of, any person;

17 2. Cigarettes sold to the United States;

18 3. Cigarettes sold to or by a voluntary unincorporated organization
19 of the armed forces of the United States operating a place for the sale
20 of goods pursuant to regulations promulgated by the appropriate execu-
21 tive agency of the United States;

22 4. Cigarettes possessed in the city by any agent or wholesale dealer
23 for sale to a dealer outside the city or for sale and shipment to any
24 person in another state for use there, provided such agent or wholesale
25 dealer complies with the regulations relating thereto.

26 c. The tax imposed under this section shall be in addition to any and
27 all other taxes.

28 d. It shall be presumed that all sales or uses mentioned in this
29 section are subject to tax until the contrary is established, and the
30 burden of proof that a sale or use is not taxable under this section
31 shall be upon the vendor or the purchaser.

32 e. Except as provided in this section, the tax shall be advanced and
33 paid by the agent or distributor. The agent shall be liable for the
34 collection and payment of the tax to the commissioner of finance by
35 purchasing from the commissioner of finance adhesive stamps of such
36 design and denomination as may be prescribed by such commissioner,
37 subject to the approval of the state commissioner of taxation and
38 finance. The tax may also be paid by the use of such metering machines
39 as are prescribed by the commissioner of finance subject to the approval
40 of the state commissioner of taxation and finance.

41 f. Within twenty-four hours after liability for the tax on the use of
42 cigarettes accrues each person liable for the tax shall file with the
43 commissioner of finance a return in such form as the commissioner of
44 finance may prescribe, together with a remittance of the tax shown to be
45 due thereon.

46 g. Agents located within or without the city shall purchase stamps
47 and affix them in the manner prescribed to packages of cigarettes to be
48 sold within the city.

49 h. The amount of taxes advanced and paid by the agent or distributor
50 as provided in this section shall be added to and collected as part of
51 the sales price of the cigarettes.

52 i. The commissioner of finance, notwithstanding any other provision
53 of this chapter, may, subject to the approval of the state commissioner
54 of taxation and finance, provide by regulation that the tax imposed by
55 this section shall be collected without the use of stamps.

1 § 11-1302.1. Imposition of tax on tobacco products. a. In accordance
 2 with section one hundred ten of the public housing law, an excise tax on
 3 the sale of tobacco products is hereby imposed and shall be paid on all
 4 tobacco products possessed in the city for sale, except as provided
 5 under this section. It is intended that the ultimate incidence of and
 6 liability for the tax shall be upon the consumer. Any dealer or distrib-
 7 utor who pays the tax to the commissioner of finance shall collect the
 8 tax from the purchaser or consumer. Such tax shall be at the rate of ten
 9 percent of the price floor for a package of the specified category of
 10 tobacco product, exclusive of sales tax, set forth in the following
 11 table, which shall be consistent with the price floors described in
 12 subdivision d of section 17-176.1 of the code of the preceding munici-
 13 pality:

14 Tobacco Product	15 Price floor (excluding OTP and 16 sales taxes)	17 Amount of OTP tax (excluding sales tax)
17 Cigar	18 \$8.00 per cigar sold 19 individually; for a 20 package, number of 21 cigars multiplied by \$1.75 plus \$6.25	\$0.80 per cigar; for a package, \$0.80 for first cigar, plus \$0.175 for each additional cigar
22 Little cigar	23 \$10.95 per pack of 20 little cigars	\$1.09 per pack
24 Smokeless tobacco	25 \$8.00 per 1.2 oz. pack- 26 age plus \$2.00 for each 27 additional 0.3 oz. or 28 any fraction thereof in excess of 1.2 oz.	\$0.80 per 1.2 oz. plus an additional \$0.20 for each 0.3 oz. or any fraction thereof in excess of 1.2 oz.
29 Snus	30 \$8.00 per 0.32 oz. pack- 31 age plus \$2.00 for each 32 additional 0.08 oz. or 33 any fraction thereof in excess of 0.32 oz.	\$0.80 per 0.32 oz. plus an additional \$0.20 for each 0.08 oz. or any fraction thereof in excess of 0.32 oz.
34 Shisha	35 \$17.00 per 3.5 oz. pack- 36 age plus \$3.40 for each 37 additional 0.7 oz. or 38 any fraction thereof in excess of 3.5 oz.	\$1.70 per 3.5 oz. plus an additional \$0.34 for each 0.7 oz. or any fraction thereof in excess of 3.5 oz.
39 Loose tobacco	40 \$2.55 per 1.5 oz. pack- 41 age plus \$0.51 for each 42 additional 0.3 oz. or 43 any fraction thereof in excess of 1.5 oz.	\$0.25 per 1.5 oz. pack- age plus an additional \$0.05 for each 0.3 oz. or any fraction thereof in excess of 1.5 oz.

44 b. The tax imposed hereunder shall not apply to:

45 1. The state of New York, or any public corporation, including a
 46 public corporation created pursuant to agreement or compact with another
 47 state or the Dominion of Canada, improvement district or other political
 48 subdivision of the state where it is the purchaser, user or consumer;

1 2. The United States of America, in so far as it is immune from taxa-
2 tion;

3 3. The United Nations or other world-wide international organizations
4 of which the United States of America is a member;

5 4. Any corporation, or association, or trust, or community chest, fund
6 or foundation, organized and operated exclusively for religious, chari-
7 table, or educational purposes, or for the prevention of cruelty to
8 children or animals, no part of the net earnings of which inures to the
9 benefit of any private shareholder or individual, and no substantial
10 part of the activities of which is carrying on propaganda, or otherwise
11 attempting to influence legislation; provided, however, that nothing in
12 this paragraph shall include an organization operated for the primary
13 purpose of carrying on a trade or business for profit, whether or not
14 all of its profits are payable to one or more organizations described in
15 this paragraph; and

16 5. Tobacco products possessed in the city by any dealer for sale
17 outside the city or for sale and shipment to any person in another state
18 for use there, provided such dealer complies with the regulations relat-
19 ing thereto.

20 c. Nothing in subdivision b of this section shall exempt sales by any
21 shop or store operated by any college, university or other public or
22 private institution for higher education from the taxes described in
23 this section.

24 d. The tax imposed under this section shall be in addition to any and
25 all other taxes.

26 e. It shall be presumed that all sales mentioned in this section are
27 subject to tax until the contrary is established, and the burden of
28 proof that a sale is not taxable under this section shall be upon the
29 dealer or the purchaser.

30 f. 1. Except as provided in this subdivision, the tax shall be
31 advanced and paid by the wholesale dealer. The wholesale dealer shall be
32 liable for the collection and payment of the tax to the commissioner of
33 finance as required under subdivision g of this section. The commis-
34 sioner may require the wholesale dealer to keep tobacco products for which
35 the tax has not yet been paid separately from tobacco products for which
36 the tax has been paid. For purposes of this chapter, retention by the
37 wholesale dealer of any tobacco products beyond the time prescribed for
38 payment under this section, without having made the requisite payment,
39 or storing any such products in violation of any separation requirements
40 prescribed by the commissioner, shall be presumptive evidence that such
41 tobacco products are possessed in violation of the provisions of this
42 chapter.

43 2. Every retail dealer shall be liable for the tax on all tobacco
44 products in his or her possession at any time, upon which tax has not
45 been paid, and the failure of any retail dealer to produce and exhibit
46 to the commissioner of finance or such commissioner's duly authorized
47 representatives upon demand, an invoice by a licensed wholesale dealer
48 for any tobacco products in his or her possession, shall be presumptive
49 evidence the tax thereon has not been paid, that such retail dealer is
50 liable for the tax thereon, and the tobacco products are possessed in
51 violation of this chapter, unless evidence of such invoice or payment
52 shall later be produced.

53 g. 1. Each wholesale dealer shall file with the commissioner of
54 finance a return, on a form required by such commissioner, indicating
55 the amount of tax due pursuant to this section and any other information
56 the commissioner may require, on a monthly basis, or on such other regu-

1 lar interval as such commissioner may prescribe. Each wholesale dealer
2 shall file the return on the twentieth day of the month following the
3 end of the month or other interval covered by the return, unless the
4 commissioner of finance prescribes a greater number of days following
5 the end of the month or a different reporting interval. Each wholesale
6 dealer shall pay the amount of tax due upon filing the return unless the
7 commissioner prescribes a different date or time for such payment.

8 2. The commissioner of finance may:

9 (A) Authorize another person, including a distributor as defined in
10 subdivision twelve of section four hundred seventy of the tax law, who
11 is not a wholesale dealer, to advance and pay the tax imposed under this
12 section;

13 (B) Exempt wholesale dealers from the requirements of this subdivi-
14 sion, upon such conditions as may be imposed by such commissioner, if he
15 or she is satisfied the tax on the tobacco products has been or is being
16 advanced and paid by another wholesale dealer or a distributor author-
17 ized under this subdivision.

18 h. The amount of taxes advanced and paid by the wholesale dealer
19 pursuant to this section shall be added to and collected as part of the
20 sales price of the tobacco products.

21 § 11-1303 License. a. License required of wholesale and retail deal-
22 ers. 1. It shall be unlawful for a person to engage in business as a
23 wholesale or retail dealer without a license as prescribed in this
24 section or subchapter one of chapter two of title twenty of the code of
25 the preceding municipality, whichever is applicable.

26 2. It shall be unlawful for a person to permit any premises under such
27 person's control to be used by any other person in violation of para-
28 graph one of subdivision a of this section.

29 b. Application for license. 1. Wholesale tobacco license. In order to
30 obtain a license to engage in business as a wholesale dealer, a person
31 shall file application with the commissioner of finance for one license
32 for each place of business that he or she desires to have for the sale
33 of cigarettes or tobacco products in the city. Every application for a
34 wholesale tobacco license shall be made upon a form prescribed and
35 prepared by the commissioner of finance and shall set forth such infor-
36 mation as the commissioner shall require. The commissioner of finance
37 may, for cause, refuse to issue a wholesale tobacco license. Upon
38 approval of the application, the commissioner of finance shall grant and
39 issue to the applicant a wholesale tobacco license for each place of
40 business within the city set forth in the application. Wholesale tobacco
41 licenses shall not be assignable and shall be valid only for the persons
42 in whose names such licenses have been issued and for the transaction of
43 business in the places designated therein and shall at all times be
44 conspicuously displayed at the places for which issued.

45 2. Retail tobacco license. In order to obtain a license to engage in
46 business as a retail dealer, a person shall file application with the
47 commissioner of consumer affairs and worker protection in accordance
48 with the provisions of section 20-202 of the code of the preceding muni-
49 cipality.

50 c. Duplicate licenses. Whenever any license issued by the commissioner
51 of finance under the provisions of this section is defaced, destroyed or
52 lost, the commissioner of finance shall issue a duplicate license to the
53 holder of the defaced, destroyed or lost license upon the payment of a
54 fee of fifteen dollars. A duplicate retail dealer license may be
55 obtained from the commissioner of consumer and worker protection as
56 provided in section 20-204 of the code of the preceding municipality.

1 d. Suspension or revocation of licenses. (1) After a hearing, the
2 commissioner of finance may suspend or revoke a wholesale tobacco
3 license and the commissioner of consumer and worker protection, upon
4 notice from the commissioner of finance, may suspend or revoke a retail
5 tobacco license whenever the commissioner of finance finds that the
6 holder thereof has failed to comply with any of the provisions of this
7 chapter or any rules of the commissioner of finance prescribed, adopted
8 and promulgated under this chapter.

9 (2) The commissioner of finance may also suspend or revoke a wholesale
10 tobacco license in accordance with the requirements of any other
11 sections of this code or any rules promulgated thereunder which author-
12 izes the suspension or revocation of a wholesale tobacco license.

13 (3) The commissioner of consumer and worker protection may also
14 suspend or revoke a retail tobacco license in accordance with the
15 requirements of any other section of this code or any rules promulgated
16 thereunder which authorize suspension or revocation of a retail tobacco
17 license.

18 (4) Upon suspending or revoking any wholesale tobacco license, the
19 commissioner of finance shall direct the holder thereof to surrender to
20 the commissioner of finance immediately all wholesale tobacco licenses
21 or duplicates thereof issued to such holder and the holder shall surren-
22 der promptly all such licenses to the commissioner of finance as
23 directed. Before the commissioner of finance suspends or revokes a
24 wholesale tobacco license or notifies the commissioner of consumer and
25 worker protection of a finding of a violation of this chapter with
26 respect to a retail tobacco license pursuant to paragraph one of this
27 subdivision, the commissioner of finance shall notify the holder and the
28 holder shall be entitled to a hearing, if desired, if the holder, within
29 ninety days from the date of such notification, or, if the commissioner
30 of finance has established a conciliation procedure pursuant to section
31 11-124 of this title and the taxpayer has requested a conciliation
32 conference in accordance therewith, within ninety days from the mailing
33 of a conciliation decision or the date of the commissioner's confirma-
34 tion of the discontinuance of the conciliation proceeding, both (A)
35 serves a petition upon the commissioner of finance and (B) files a peti-
36 tion with the tax appeals tribunal for a hearing. After such hearing,
37 the commissioner of finance, good cause appearing therefor, may suspend
38 or revoke the wholesale tobacco license, and, in the case of a retail
39 tobacco license, notify the commissioner of consumer and worker
40 protection of a violation of this chapter or any rules promulgated ther-
41 eunder. Upon such notification, the commissioner of consumer and worker
42 protection may suspend or revoke a retail cigarette license as provided
43 in subdivision b of section 20-206 of the code of the preceding munici-
44 pality. The commissioner of finance may, by rule, provide for granting a
45 similar hearing to an applicant who has been refused a wholesale ciga-
46 rette license by the commissioner of finance.

47 e. Prohibited sales and purchases. No agent or dealer shall sell ciga-
48 rettes or tobacco products to an unlicensed wholesale or retail dealer,
49 or to a wholesale or retail dealer whose license has been suspended or
50 revoked.

51 No dealer shall purchase cigarettes or tobacco products from any
52 person other than a manufacturer or a licensed wholesale dealer.

53 f. Retail dealers. The commissioner of finance may, after hearing,
54 issue an order prohibiting a retail dealer from selling cigarettes, for
55 such period as the order shall specify, for failure to comply with any
56 of the provisions of this chapter or any rules or regulations of the

1 commissioner of finance prescribed, adopted and promulgated under this
2 chapter.

3 g. License fees; numbering and registering of licenses; term. 1. The
4 annual fee for a wholesale dealer's license shall be six hundred
5 dollars, and the annual fee for a retail dealer's license shall be as
6 provided in subdivision c of section 20-202 of the code of the preceding
7 municipality.

8 2. Wholesale tobacco licenses shall be regularly numbered and duly
9 registered.

10 3. Wholesale tobacco licenses shall expire on January thirty-first
11 next succeeding the date of issuance unless sooner suspended or revoked.

12 § 11-1304 Preparation and sale of stamps; commissions. a. The
13 commissioner of finance shall, subject to the approval of the state tax
14 commission, prescribe, prepare and furnish stamps of such denominations
15 and quantities as may be necessary for the payment of the tax imposed by
16 this chapter, and may, from time to time, provide for the issuance and
17 exclusive use of stamps of a new design and forbid the use of stamps of
18 any other design. Such stamps shall be in the form of a single stamp
19 for the payment of the tax imposed by this chapter or, in lieu thereof,
20 a joint single stamp to be prepared and issued by the state of New York
21 and the city for the payment of the tax imposed by this chapter and the
22 taxes imposed by article twenty of the tax law. The commissioner of
23 finance may make such arrangements with the state tax commission for the
24 method of acquiring and the manner of sharing the costs of such joint
25 single stamps as he or she deems appropriate. The commissioner of
26 finance, subject to the approval of the state commissioner of taxation
27 and finance, shall make provisions for the sale of such stamps at such
28 places as he or she may deem necessary, and may appoint fiscal agents
29 for such purpose.

30 b. The commissioner of finance may appoint wholesale dealers of ciga-
31 rettes and any other person within or without the city as agents to
32 affix stamps to be used in paying the tax hereby imposed, but an agent
33 shall at all times have the right to appoint the person in his or her
34 employ who is to affix the stamps to any cigarettes under the agent's
35 control. Whenever the commissioner of finance shall sell, consign or
36 deliver to any such agent any such stamps, such agent shall be entitled
37 to receive as compensation for his or her services and expenses in
38 affixing such stamps, and to retain out of the moneys to be paid by the
39 agent for such stamps, a commission on the par value thereof. The
40 commissioner of finance is hereby authorized to prescribe a schedule of
41 commissions not exceeding five per centum, allowable to such agent for
42 affixing such stamps; provided, however, that the commissioner of
43 finance may authorize commissions to agents and temporary agents not
44 exceeding ten per centum for a special period not exceeding fifteen days
45 immediately following the enactment of this chapter to cover the initial
46 stamping of packages of cigarettes. Such schedule shall be uniform for
47 each type and denomination of stamp used, and may be on a graduated
48 scale with respect to the number of stamps purchased. In the event that
49 a joint stamp is issued, the commissions allowed shall be determined
50 jointly by the state commissioner of taxation and finance and the
51 commissioner of finance and shall be based on the full par value of such
52 stamp. The extent to which the city and the state of New York shall
53 bear the expense of such commissions shall be determined by agreement
54 between the commissioner of taxation and finance and the commissioner
55 of finance. The commissioner of finance may in his or her discretion
56 permit an agent to pay for such stamps within thirty days after the date

1 of sale, consignment or delivery of such stamps to such agents, and may
2 require any such agent to file with the commissioner of finance a bond,
3 issued by a surety company approved by the superintendent of insurance
4 as to solvency and responsibility and authorized to transact business in
5 the state, in such amounts as the commissioner of finance may fix, to
6 secure the payment of any sums from such agent pursuant to this chapter.

7 c. The commissioner of finance may redeem unused stamps lawfully in
8 the possession of any person. No person shall sell or offer for sale
9 any stamp issued under this chapter, except by written permission of the
10 commissioner of finance. The commissioner of finance may prescribe
11 rules and regulations concerning refunds, sales of stamps and redemp-
12 tions under the provisions of this chapter.

13 d. (1) Except as provided in this subdivision, it shall be unlawful
14 for any person to sell, offer for sale, possess or transport any affixed
15 or unaffixed false, altered or counterfeit cigarette tax stamps,
16 imprints or impressions.

17 (2) Paragraph one of this subdivision shall not apply to:

18 (A) a person, other than a retail dealer, in possession of twenty or
19 fewer affixed tax stamps;

20 (B) public officers or employees in the performance of their official
21 duties requiring possession or control of affixed or unaffixed false,
22 altered or counterfeit cigarette tax stamps, imprints or impressions; or

23 (C) any person authorized by the commissioner of finance or the
24 commissioner of the department of taxation and finance of the state of
25 New York to perform law enforcement functions.

26 § 11-1305 Affixation and cancellation of stamps; presumptions. a.
27 Each agent shall affix to each package of cigarettes stamps evidencing
28 the payment of tax imposed by this chapter and shall cancel such stamps
29 prior to delivery of such cigarettes to any dealer in the city, unless
30 stamps have been affixed to such packages of cigarettes and cancelled
31 before such agent received them.

32 b. Each dealer, other than an agent, in the city shall immediately
33 upon the receipt of any cigarettes at his or her place of business mark
34 in ink on each unopened box, carton or other container of such ciga-
35 rettes the word "received" and the year, month, day and hour of such
36 receipt and shall affix his or her signature thereto or shall mark them
37 in any other manner prescribed by the commissioner of finance. In addi-
38 tion, each retail dealer shall, within twenty-four hours after receipt
39 of any cigarettes at his or her place of business and prior to exposing
40 for sale or sale by such retail dealer of such cigarettes, open such
41 box, carton or other container and, unless such stamps have been previ-
42 ously affixed, immediately notify the dealer from whom he or she
43 purchased such cigarettes and arrange for the replacement by the dealer
44 of such cigarettes by cigarettes with such stamps affixed within twen-
45 ty-four hours.

46 c. Stamps shall be cancelled in the manner prescribed by regulation.

47 d. Whenever any cigarettes are found in the place of business of a
48 dealer without the stamps affixed and cancelled, or not marked as having
49 been received within the preceding twenty-four hours, the prima facie
50 presumption shall arise that such cigarettes are kept therein in
51 violation of the provisions of this chapter.

52 e. Stamps shall be affixed to each package of cigarettes of an aggre-
53 gate denomination not less than the amount of the tax upon the contents
54 therein, and shall be affixed in such manner as to be visible to the
55 purchaser.

1 § 11-1306 Possession and transportation of unstamped cigarettes.
2 Every person who shall possess or transport upon the public highways,
3 roads or streets of this city more than four hundred cigarettes in
4 unstamped packages, shall be required to have in his or her actual
5 possession invoices or delivery tickets for such cigarettes. All such
6 invoices or delivery tickets shall show the true name and address of the
7 consignor or seller, the true name and address of the consignee or
8 purchaser and the quantity and brands of the cigarettes transported.
9 The absence of such invoices or delivery tickets shall be prima facie
10 evidence that such person is a dealer in cigarettes in the city and
11 subject to the provisions of this chapter.

12 § 11-1307 Records to be kept; examination. a. 1. At the time of
13 delivering cigarettes to any person in the city, each agent or wholesale
14 dealer shall make a true duplicate invoice showing the date of delivery,
15 the number of packages and the number of cigarettes contained therein in
16 each shipment of cigarettes delivered, and the name of the purchaser to
17 whom delivery is made, and shall retain the same for a period of three
18 years subject to the use and inspection of the commissioner of finance.
19 Each dealer shall procure and retain invoices showing the number of
20 packages and the number of cigarettes contained therein in each shipment
21 of cigarettes received by such dealer, the date thereof, and the name of
22 the shipper, and shall retain the same for a period of three years
23 subject to the use and inspection of the commissioner of finance.

24 2. At the time of delivering tobacco products to any person in the
25 city, each wholesale dealer shall make a true duplicate invoice showing
26 the date of delivery, the number of packages and the number of tobacco
27 products contained therein as well as any tobacco products not in pack-
28 ages in each shipment of tobacco products delivered, and the name of the
29 purchaser to whom delivery is made and shall retain the same for a peri-
30 od of three years subject to the use and inspection of the commissioner
31 of finance. Each dealer shall procure and retain invoices showing the
32 number of packages and the number of tobacco products contained therein
33 as well as any tobacco products not in packages in each shipment of
34 tobacco products received by such dealer, the date thereof, and the name
35 of the shipper, and shall retain the same for a period of three years
36 subject to the use and inspection of the commissioner of finance.

37 3. Each dealer shall retain any other records and in such form as may
38 be required by the commissioner of finance indicating proof of the
39 payment of the tax imposed under section 11-1302.1 of this chapter. Any
40 failure to provide such records upon request by the commissioner of
41 finance or such commissioner's duly authorized representatives shall be
42 presumptive evidence that the dealer has violated the provisions of this
43 chapter.

44 b. The commissioner of finance by regulation may provide that whenever
45 cigarettes or tobacco products are shipped into the city, the railroad
46 company, express company, trucking company, or carrier transporting any
47 shipment thereof shall file with the commissioner of finance a copy of
48 the freight bill within ten days after the delivery in the city of each
49 shipment.

50 c. All dealers shall maintain and keep for a period of three years
51 such other records of cigarettes or tobacco products received or sold
52 within the city as may be required by the commissioner of finance. All
53 wholesale dealers shall maintain and keep for a period of three years
54 such other records of cigarettes or tobacco products delivered within
55 the city.

1 d. Without limiting the powers granted the commissioner of consumer
2 and worker protection pursuant to title twenty of the code of the
3 preceding municipality and any rules promulgated thereunder, the commis-
4 sioner of finance or the commissioner's duly authorized representatives
5 are hereby authorized to examine the books, papers, invoices and other
6 records, and stock of cigarettes or tobacco products in and upon any
7 premises where the same are placed, stored and sold, and equipment of
8 any such agent or dealer pertaining to the sale and delivery of ciga-
9 rettes or tobacco products taxable under this chapter. To verify the
10 accuracy of the tax imposed and assessed by this chapter, each such
11 person is hereby directed and required to give to the commissioner of
12 finance or the commissioner's duly authorized representatives, the
13 means, facilities and opportunity for such examinations as are herein
14 provided for and required.

15 e. The commissioner of finance shall investigate any failure to pay
16 the tax required by this chapter or any other failure to comply with
17 this chapter or the rules or regulations promulgated thereunder, and
18 shall take the necessary steps to enforce compliance therewith.

19 § 11-1308 General powers of the commissioner of finance. In addition
20 to the powers granted to the commissioner of finance in this chapter, he
21 or she is hereby authorized and empowered:

22 1. To make, adopt and amend rules and regulations appropriate to the
23 carrying out of this chapter and the purposes thereof; and to require
24 the filing of reports by agents and/or dealers;

25 2. To prescribe the method and the means to be used in the cancella-
26 tion of stamps;

27 3. To fix the denominations and the method of sale of stamps;

28 4. To delegate his or her powers to a deputy or other employee or
29 employees of the department of finance;

30 5. To extend, for cause shown, the time for filing any return or
31 reports for a period not exceeding thirty days; and to compromise
32 disputed claims in connection with the taxes hereby imposed;

33 6. To assess, determine, revise and adjust the taxes imposed under
34 this chapter;

35 7. To request information from the state commissioner of taxation and
36 finance, the treasury department of the United States or the taxing
37 officials of any other state or city that imposes a similar tax to any
38 tax imposed by this chapter, and to afford information to such commis-
39 sion, department or other taxing official, any other provision of this
40 chapter to the contrary notwithstanding;

41 8. To enter into an arrangement with the state commissioner of taxa-
42 tion and finance with respect to cooperative collection, auditing or
43 administration of the taxes imposed by this chapter and the taxes
44 imposed by article twenty of the tax law of the state of New York.

45 9. To prescribe forms to be filled out by the vendor or purchaser, or
46 both, in each instance in which a sale is made by an agent or wholesale
47 dealer to a person outside the state or the city or to a dealer in the
48 city for purposes of resale outside the state or the city.

49 10. To appoint any dealer as a temporary agent to buy and affix
50 stamps for a period not in excess of fifteen days.

51 11. In furtherance of the purposes of paragraph three of subdivision
52 a of section 11-1302 of this chapter, to provide by appropriate regu-
53 lation for the maintenance of such differentials in wholesale and retail
54 prices of cigarettes sold by any vendor, other than the manufacturer, so
55 as to reflect the amounts of tax attributable to the tar and nicotine
56 content of cigarettes sold. In so doing he or she may use and consider

1 the factory price of various brands of cigarettes. In addition, the
2 commissioner may consider the mode or method by which retail sales are
3 effected and limit his or her regulations so as to affect any one or
4 more or all of such modes or methods.

5 § 11-1309 Notifying taxpayers of assessments. a. The owner of any
6 lot, piece or parcel of land in the city of Staten Island or any person
7 interested in such lot, piece or parcel, may file with the bureau of
8 city collections a statement containing a brief description of such
9 land, together with the section, block and lot number thereof, or such
10 other designation as at the time is established by the department of
11 finance, and a statement of the applicant's interest therein, together
12 with a written request that such lot, piece or parcel of land be regis-
13 tered in such bureau, in the name of the applicant. In such statement
14 the applicant shall designate a post office address to which notifica-
15 tions addressed to such applicant shall be sent. A brief description of
16 such lot, piece or parcel of land corresponding to the description ther-
17 eof in the statement so filed, together with the name of the applicant
18 and his or her post office address and the date of such application,
19 shall thereupon be registered in the offices of such bureau as herein-
20 after provided.

21 b. As soon as any assessment for a local improvement shall have been
22 confirmed, including assessments confirmed by a court of record, and the
23 list thereof shall have been entered and filed in the bureau of city
24 collections, such assessment list shall be examined and thereupon, with-
25 in twenty days after such entry there shall be mailed a notice addressed
26 to each person in whose name any lot, piece or parcel of land, affected
27 by such assessment, is registered, at the post office address registered
28 in the records of such bureau, which notice shall contain the brief
29 description of the lot, piece or parcel of land registered in the name
30 of the person to whom such notice is addressed, together with the amount
31 assessed thereon, date of entry, and title of the improvement for which
32 such assessment is made, and a statement of the rate of interest or
33 penalty imposed for the nonpayment of such assessment, and the date from
34 which the interest or penalty will be computed. Failure to comply with
35 the provisions of this section, however, shall in no manner affect the
36 validity or collectibility of any assessment heretofore or hereafter
37 confirmed, nor shall any claim arise or exist against the comptroller,
38 the commissioner of finance, the city collector or any officer of the
39 city by reason of such failure.

40 c. The city collector shall for the purpose of this section provide
41 appropriate records for each section of the city as the same shall
42 appear upon the tax maps of the city.

43 § 11-1310 Determination of tax. If any person fails to pay the tax, or
44 to file a return required by this chapter or if a return, when filed, is
45 insufficient and the maker fails to file a corrected or sufficient
46 return within ten days after the same may be required by notice from the
47 commissioner of finance, the commissioner of finance shall determine the
48 amount of tax due from such information as may be obtainable or on the
49 basis of external indices, such as number of cigarettes purchased or
50 sold, number of tobacco products purchased or sold, stock on hand,
51 volume of sales by similar dealers or other factors. Notice of such
52 determination shall be given to the person liable for the payment of the
53 tax. Such determination shall finally and irrevocably fix the tax unless
54 the person against whom it is assessed shall, within ninety days of the
55 giving of such notice, or, if the commissioner of finance has estab-
56 lished a conciliation procedure pursuant to section 11-124 of this title

1 and the person liable for the tax has requested a conciliation confer-
2 ence in accordance therewith, within ninety days from the mailing of a
3 conciliation decision or the date of the commissioner's confirmation of
4 the discontinuance of the conciliation proceeding, both (1) serves a
5 petition upon the commissioner of finance and (2) files a petition with
6 the tax appeals tribunal for a hearing, or unless the commissioner of
7 finance shall of his or her own motion redetermine such tax. Such hear-
8 ing and any appeal to the tax appeals tribunal sitting en banc from the
9 decision rendered in such hearing shall be conducted in the manner and
10 subject to the requirements prescribed by the tax appeals tribunal
11 pursuant to sections one hundred sixty-eight through one hundred seven-
12 ty-two of the charter of the preceding municipality as it existed Janu-
13 ary first, nineteen hundred ninety-four. After such hearing the tax
14 appeals tribunal shall give notice of its decision to the person liable
15 for the tax and to the commissioner of finance. A decision of the tax
16 appeals tribunal sitting en banc shall be reviewable for error, illegal-
17 ity, unconstitutionality or any other reason whatsoever by a proceeding
18 under article seventy-eight of the civil practice law and rules if
19 instituted by the person against whom the tax was assessed within four
20 months after the giving of the notice of such tax appeals tribunal deci-
21 sion; provided however, that if such decision regards the tax imposed
22 under section 11-1302.1 of this chapter, such proceeding must be insti-
23 tuted by the person against whom the tax was assessed within thirty days
24 after the giving of the notice of such tax appeals tribunal decision.
25 Such proceeding shall not be instituted by a person liable for the tax
26 unless the amount of any tax sought to be reviewed with interest and
27 penalties thereon, if any, shall have first been deposited with the
28 commissioner of finance and an undertaking filed with the commissioner
29 of finance in such amount and with such sureties as a justice of the
30 supreme court shall approve, to the effect that if such proceeding be
31 dismissed or the tax confirmed, such person will pay all costs and
32 charges which may accrue in the prosecution of the proceeding.

33 § 11-1311 Refunds. a. In the manner provided in this subdivision the
34 commissioner of finance shall refund, without interest, any tax, inter-
35 est or penalty erroneously, illegally or unconstitutionally collected or
36 paid. In addition, whenever any cigarettes upon which stamps have been
37 affixed have been sold and shipped to a dealer outside the city for sale
38 there or to any person in another state for use there, or have become
39 unfit for use and consumption or unsalable, or have been destroyed, the
40 dealer shall be entitled to a refund of the amount of tax paid, less the
41 applicable commission, with respect to such cigarettes.

42 In any event no refund shall be granted unless application to the
43 commissioner of finance therefor is made within two years after the
44 stamps were affixed to such cigarettes or the tax was paid, except if a
45 person has consented in writing to an extension of the period for
46 assessment of additional tax pursuant to subdivision c of section
47 11-1315 of this chapter, and such consent is given within the two-year
48 period for making a refund application provided in this subdivision, the
49 period for making a refund application shall not expire prior to six
50 months after the expiration of the period within which an assessment
51 could be made pursuant to such consent or any extension thereof.

52 Whenever a refund is made or denied by the commissioner of finance,
53 the commissioner shall state his or her reasons therefor and give notice
54 thereof to the applicant in writing. A person shall not be entitled to a
55 hearing in connection with such application for a refund if such person
56 has already had a hearing or had been given the opportunity of a hearing

1 as provided in section 11-1310 of this chapter or has failed to avail
2 himself or herself of the remedies therein provided. No refund shall be
3 made of a tax, interest or penalty paid pursuant to a determination of
4 the commissioner of finance as provided in section 11-1310 of this chap-
5 ter, unless the tax appeals tribunal, after a hearing as in said section
6 provided or the commissioner of finance, of his or her own motion, shall
7 have reduced the tax or penalty, or it shall have been established in a
8 proceeding, pursuant to article seventy-eight of the civil practice law
9 and rules that such determination was erroneous, illegal, unconstitu-
10 tional or otherwise improper, in which event a refund without interest
11 shall be made as provided upon the determination of such proceeding. Any
12 determination of the commissioner of finance denying a refund pursuant
13 to this subdivision shall be final and irrevocable unless the applicant
14 for such refund, within ninety days from the mailing of notice of such
15 determination, or, if the commissioner of finance has established a
16 conciliation procedure pursuant to section 11-124 of this title and the
17 applicant has requested a conciliation conference in accordance there-
18 with, within ninety days from the mailing of a conciliation decision or
19 the date of the commissioner's confirmation of the discontinuance of the
20 conciliation proceeding, both (1) serves a petition upon the commission-
21 er of finance and (2) files a petition with the tax appeals tribunal for
22 a hearing.

23 Such petition for a refund made as provided in this subdivision shall
24 be deemed an application for a revision of any tax, penalty or interest
25 complained of. Such hearing and any appeal to the tax appeals tribunal
26 sitting en banc from the decision rendered in such hearing shall be
27 conducted in the manner and subject to the requirements prescribed by
28 the tax appeals tribunal pursuant to sections one hundred sixty-eight
29 through one hundred seventy-two of the charter of the preceding municip-
30 ality. After such hearing, the tax appeals tribunal shall give notice
31 of its decision to the applicant and to the commissioner of finance.
32 The applicant shall be entitled to maintain a proceeding under article
33 seventy-eight of the civil practice law and rules to review a decision
34 of the tax appeals tribunal sitting en banc, provided, however, that
35 such proceeding is instituted within four months after such decision,
36 provided however, that if such decision regards the tax imposed under
37 section 11-1302.1 of this chapter, such proceeding must be instituted
38 within thirty days after such decision, and provided, further, in the
39 case of an application by a person liable for the tax, that a final
40 determination of tax due was not previously made, and that an undertak-
41 ing shall first be filed by such person with the commissioner of finance
42 in such amount and with such sureties as a justice of the supreme court
43 shall approve, to the effect that if such proceeding be dismissed or the
44 tax confirmed such person will pay all costs and charges which may
45 accrue in the prosecution of such proceeding.

46 b. If the commissioner of finance is satisfied that any dealer is
47 entitled to a refund the commissioner shall issue to such dealer stamps
48 of sufficient value to cover the refund or to make such refund.

49 § 11-1312 Reserves. In cases where the taxpayer has applied for a
50 refund and has instituted proceedings under article seventy-eight of the
51 civil practice law and rules to review a determination adverse to the
52 taxpayer on his or her application for refund or has deposited the
53 amount of tax assessed in connection with proceedings under section
54 11-1310 of this chapter, the comptroller shall set up appropriate
55 reserves to meet any decision adverse to the city.

1 § 11-1313 Remedies exclusive. The remedies provided by sections
2 11-1310 and 11-1311 of this chapter shall be the exclusive remedies
3 available to any person for the review of tax liability imposed by this
4 chapter; and no determination or proposed determination of tax or deter-
5 mination on an application for refund by the commissioner of finance,
6 nor any decision by the tax appeals tribunal or any of its administra-
7 tive law judges, shall be enjoined or reviewed by an action for declara-
8 tory judgment, an action for money had and received, or by any legal or
9 equitable action or proceeding other than, in the case of a decision by
10 the tax appeals tribunal sitting en banc, a proceeding under article
11 seventy-eight of the civil practice law and rules; provided, however,
12 that a taxpayer may proceed by declaratory judgment if the taxpayer
13 institutes suit within thirty days after a deficiency assessment is made
14 and pays the amount of the deficiency assessment to the commissioner of
15 finance prior to the institution of such suit and posts a bond for costs
16 as provided in section 11-1310 of this chapter.

17 § 11-1314 Proceedings to recover tax. a. Whenever any person shall
18 fail to pay any tax, penalty or interest imposed by this chapter as
19 herein provided, the corporation counsel shall, upon the request of the
20 commissioner of finance, bring or cause to be brought an action to
21 enforce the payment of the same on behalf of the city in any court of
22 the state of New York or of any other state or of the United States.
23 If, however, the commissioner of finance in his or her discretion
24 believes that a taxpayer subject to the provisions of this chapter is
25 about to cease business, leave the state or remove or dissipate the
26 assets out of which the tax, interest or penalties might be satisfied
27 and that any such tax, interest or penalty will not be paid when due, he
28 or she may declare such tax, interest or penalty to be immediately due
29 and payable and may issue a warrant immediately.

30 b. In addition to all other remedies for the collection of any taxes,
31 penalties or interest due under the provisions of this chapter, the
32 commissioner of finance may with respect to any tax imposed under
33 section 11-1302 of this chapter or any penalties or interest related
34 thereto issue a warrant, directed to the city sheriff commanding the
35 sheriff to levy upon and sell the real and personal property of the
36 person liable for the tax which may be found within the city, for the
37 payment of the amount thereof, with any penalties and interest and the
38 cost of executing the warrant, and to return such warrant to the commis-
39 sioner of finance and to pay to the commissioner the money collected by
40 virtue thereof within sixty days after the receipt of such warrant. The
41 city sheriff shall within five days after the receipt of the warrant
42 file with the county clerk a copy thereof, and thereupon such clerk
43 shall enter in the judgment docket the name of the person mentioned in
44 the warrant and the amount of the taxes, penalty and interest for which
45 the warrant is issued and the date when such copy is filed. Thereupon
46 the amount of such warrant shall become a lien upon the title to and
47 interest in real and personal property of the person against whom the
48 warrant is issued. The city sheriff shall then proceed upon the warrant
49 in the same manner and with like effect as that provided by law in
50 respect to executions issued against property upon judgments of a court
51 of record, and for services in executing the warrant the city sheriff
52 shall be entitled to the same fees which he or she may collect in the
53 same manner. In the discretion of the commissioner of finance a warrant
54 of like terms, force and effect may be issued and directed to any offi-
55 cer or employee of the department of finance, and in the execution ther-
56 eof such officer or employee shall have all the powers conferred by law

1 upon sheriffs, but shall be entitled to no fee or compensation in excess
2 of the actual expenses paid in the performance of such duty. If a
3 warrant is returned not satisfied in full, the commissioner of finance
4 may from time to time issue new warrants and shall have the same remedies
5 to enforce the amount due thereunder as if the city had recovered
6 judgment therefor and execution thereon had been returned unsatisfied.

7 c. The commissioner of finance, if he or she finds that the interests
8 of the city will not thereby be jeopardized, and upon such conditions as
9 the commissioner of finance may require, may release any property from
10 the lien of any warrant or vacate such warrant for unpaid taxes, additions
11 to tax, penalties and interest filed pursuant to subdivision b of
12 this section, and such release or vacating of the warrant may be
13 recorded in the office of any recording officer in which such warrant
14 has been filed. The clerk shall thereupon cancel and discharge as of the
15 original date of docketing the vacated warrant.

16 § 11-1315 Notices and limitations of time. a. Any notice authorized
17 or required under the provisions of this chapter may be given by
18 mailing the same to the person for whom it is intended in a postpaid
19 envelope addressed to such person at the address given in the last
20 return filed by such person pursuant to the provisions of this chapter
21 or in any application made by such person or, if no return has been
22 filed or application made, then to such address as may be obtainable.
23 The mailing of such notice shall be presumptive evidence of the receipt
24 of the same by the person to whom addressed. Any period of time which
25 is determined according to the provisions of this chapter by the giving
26 of notice shall commence to run from the date of mailing of such notice.

27 b. The provisions of the civil practice law and rules or any other
28 law relative to limitations of time for the enforcement of a civil remedy
29 shall not apply to any proceeding or action taken by the city to
30 levy, appraise, assess, determine or enforce the collection of any tax,
31 interest or penalty provided by this chapter. However, except in the
32 case of a wilfully false or fraudulent return with intent to evade the
33 tax, no assessment of additional tax shall be made after the expiration
34 of more than three years from the date of the filing of a return,
35 provided, that where no return has been filed as provided by law the tax
36 may be assessed at any time.

37 c. Where, before the expiration of the period prescribed herein for
38 the assessment of an additional tax, a person has consented in writing
39 that such period be extended, the amount of such additional tax due may
40 be determined at any time within such extended period. The period so
41 extended may be further extended by subsequent consents in writing made
42 before the expiration of the extended period.

43 d. If any return, claim, statement, notice, application, or other
44 document required to be filed, or any payment required to be made, within
45 a prescribed period or on or before a prescribed date under authority
46 of any provision of this chapter is, after such period or such date,
47 delivered by United States mail to the commissioner of finance, the tax
48 appeals tribunal, bureau, office, officer or person with which or with
49 whom such document is required to be filed, or to which or to whom such
50 payment is required to be made, the date of the United States postmark
51 stamped on the envelope shall be deemed to be the date of delivery. This
52 subdivision shall apply only if the postmark date falls within the
53 prescribed period or on or before the prescribed date for the filing of
54 such document, or for making the payment, including any extension granted
55 for such filing or payment, and only if such document or payment was
56 deposited in the mail, postage prepaid, properly addressed to the

1 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
2 cer or person with which or with whom the document is required to be
3 filed or to which or to whom such payment is required to be made. If any
4 document is sent by United States registered mail, such registration
5 shall be prima facie evidence that such document was delivered to the
6 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
7 cer or person to which or to whom addressed, and the date of registra-
8 tion shall be deemed the postmark date. The commissioner of finance or,
9 where relevant, the tax appeals tribunal is authorized to provide by
10 regulation the extent to which the provisions of this subdivision with
11 respect to prima facie evidence of delivery and the postmark date shall
12 apply to certified mail. Except as provided in subdivision f of this
13 section, this subdivision shall apply in the case of postmarks not made
14 by the United States postal service only if and to the extent provided
15 by regulation of the commissioner of finance or, where relevant, the tax
16 appeals tribunal.

17 e. When the last day prescribed under authority of this chapter,
18 including any extension of time, for performing any act falls on a
19 Saturday, Sunday or legal holiday in the state, the performance of such
20 act shall be considered timely if it is performed on the next succeeding
21 day which is not a Saturday, Sunday or legal holiday.

22 f. (1) Any reference in subdivision d of this section to the United
23 States mail shall be treated as including a reference to any delivery
24 service designated by the secretary of the treasury of the United States
25 pursuant to section seventy-five hundred two of the internal revenue
26 code and any reference in subdivision d of this section to a United
27 States postmark shall be treated as including a reference to any date
28 recorded or marked in the manner described in section seventy-five
29 hundred two of the internal revenue code by a designated delivery
30 service. If the commissioner of finance finds that any delivery service
31 designated by such secretary is inadequate for the needs of the city,
32 the commissioner of finance may withdraw such designation for purposes
33 of this title. The commissioner of finance may also designate additional
34 delivery services meeting the criteria of section seventy-five hundred
35 two of the internal revenue code for purposes of this title, or may
36 withdraw any such designation if the commissioner of finance finds that
37 a delivery service so designated is inadequate for the needs of the
38 city. Any reference in subdivision d of this section to the United
39 States mail shall be treated as including a reference to any delivery
40 service designated by the commissioner of finance and any reference in
41 subdivision d of this section to a United States postmark shall be
42 treated as including a reference to any date recorded or marked in the
43 manner described in section seventy-five hundred two of the internal
44 revenue code by a delivery service designated by the commissioner of
45 finance, provided, however, any withdrawal of designation or additional
46 designation by the commissioner of finance shall not be effective for
47 purposes of service upon the tax appeals tribunal, unless and until such
48 withdrawal of designation or additional designation is ratified by the
49 president of the tax appeals tribunal.

50 (2) Any equivalent of registered or certified mail designated by the
51 United States secretary of the treasury, or as may be designated by the
52 commissioner of finance pursuant to the same criteria used by such
53 secretary for such designations pursuant to section seventy-five hundred
54 two of the internal revenue code, shall be included within the meaning
55 of registered or certified mail as used in subdivision d of this
56 section. If the commissioner of finance finds that any equivalent of

1 registered or certified mail designated by such secretary or the commis-
2 sioner of finance is inadequate for the needs of the city, the commis-
3 sioner of finance may withdraw such designation for purposes of this
4 title, provided, however, any withdrawal of designation or additional
5 designation by the commissioner of finance shall not be effective for
6 purposes of service upon the tax appeals tribunal, unless and until such
7 withdrawal of designation or additional designation is ratified by the
8 president of the tax appeals tribunal.

9 § 11-1317 Penalties and interest. a. (1) Any person failing to pay a
10 tax payable under section 11-1302 of this chapter when due shall be
11 subject to a penalty of fifty per centum of the amount of tax due, but
12 the commissioner of finance, if satisfied that the delay was excusable,
13 may remit all or any part of such penalty. Such penalty shall be paid
14 and disposed of in the same manner as other revenues under this chapter.
15 Unpaid penalties may be enforced in the same manner as the tax imposed
16 by section 11-1302 of this chapter.

17 (2) Any person failing to pay a tax payable under section 11-1302.1 of
18 this chapter when due shall be subject to a penalty of three hundred per
19 centum of the amount of tax due, but the commissioner of finance, if
20 satisfied that the delay was excusable, may remit all or any part of
21 such penalty. Such penalty shall be paid and disposed of in the same
22 manner as other revenues from the tax imposed under section 11-1302.1 of
23 this chapter. Unpaid penalties may be enforced in the same manner as the
24 tax imposed by section 11-1302.1 of this chapter.

25 b. (1) In addition to any other penalty imposed by this section, the
26 commissioner of finance may (a) impose a penalty of not more than one
27 hundred dollars for each two hundred cigarettes or fraction thereof in
28 excess of one thousand cigarettes in unstamped or unlawfully stamped
29 packages in the possession or under the control of any person and (b)
30 impose a penalty of not more than two hundred dollars for each ten
31 affixed or unaffixed false, altered or counterfeit cigarette tax stamps,
32 imprints or impressions, or fraction thereof, in excess of one hundred
33 affixed or unaffixed false, altered or counterfeit cigarette tax stamps,
34 imprints or impressions in the possession or under the control of any
35 person. Such penalty shall be determined as provided in section 11-1310
36 of this chapter, and may be reviewed only pursuant to such section. Such
37 penalty may be enforced in the same manner as the tax imposed by this
38 chapter. The commissioner of finance, in his or her discretion, may
39 remit all or part of such penalty. Such penalty shall be paid and
40 disposed of in the same manner as other revenues under this chapter.

41 (2) The penalties imposed by this paragraph may be imposed by the
42 commissioner of finance in addition to any other penalty imposed by this
43 section, but in lieu of the penalties imposed by subparagraph (a) of
44 paragraph one of this subdivision: (a) not less than thirty dollars but
45 not more than two hundred dollars for each two hundred cigarettes, or
46 fraction thereof, in excess of one thousand cigarettes but less than or
47 equal to five thousand cigarettes in unstamped or unlawfully stamped
48 packages knowingly in the possession or knowingly under the control of
49 any person; (b) not less than seventy-five dollars but not more than two
50 hundred dollars for each two hundred cigarettes, or fraction thereof, in
51 excess of five thousand cigarettes but less than or equal to twenty
52 thousand cigarettes in unstamped or unlawfully stamped packages know-
53 ingly in the possession or knowingly under the control of any person; and
54 (c) not less than one hundred dollars but not more than two hundred
55 dollars for each two hundred cigarettes, or fraction thereof, in excess
56 of twenty thousand cigarettes in unstamped or unlawfully stamped pack-

1 ages, knowingly in the possession or knowingly under the control of any
2 person. Such penalty shall be determined as provided in section 11-1310
3 of this chapter, and may be reviewed only pursuant to such section. Such
4 penalty may be enforced in the same manner as the tax imposed by this
5 chapter. The commissioner of finance, in his or her discretion, may
6 remit all or part of such penalty. Such penalty shall be paid and
7 disposed of in the same manner as other revenues under this chapter.

8 c. (1) The possession within the city of more than four hundred ciga-
9 rettes in unstamped or unlawfully stamped packages shall be presumptive
10 evidence that such cigarettes are subject to tax as provided by this
11 chapter.

12 (2) Nothing in this section shall apply to common or contract carriers
13 or warehousemen while engaged in lawfully transporting or storing
14 unstamped packages of cigarettes as merchandise, nor to any employee of
15 such carrier or warehouseman acting within the scope of his or her
16 employment, nor to public officers or employees in the performance of
17 their official duties requiring possession or control of unstamped or
18 unlawfully stamped packages of cigarettes, nor to temporary incidental
19 possession by employees or agents of persons lawfully entitled to
20 possession, nor to persons whose possession is for the purpose of aiding
21 police officers in performing their duties.

22 d. (1) If any amount of tax is not paid on or before the last date
23 prescribed for payment, without regard to any extension of time granted
24 for payment, interest on such amount at the rate set by the commissioner
25 of finance pursuant to paragraph two of this subdivision, or, if no rate
26 is set, at the rate of seven and one-half percent per annum, shall be
27 paid for the period from such last date to the date of payment. In
28 computing the amount of interest to be paid, such interest shall be
29 compounded daily. Interest under this subdivision shall not be paid if
30 the amount thereof is less than one dollar. The interest imposed by this
31 subdivision shall be paid and disposed of in the same manner as other
32 revenues from this chapter. Unpaid interest may be enforced in the same
33 manner as the tax imposed by this chapter.

34 (2) (A) The commissioner of finance shall set the rate of interest to
35 be paid pursuant to paragraph one of this subdivision, but if no such
36 rate of interest is set, such rate shall be deemed to be set at seven
37 and one-half percent per annum. Such rate shall be the rate prescribed
38 in subparagraph (B) of this paragraph but shall not be less than seven
39 and one-half percent per annum. Any such rate set by the commissioner of
40 finance shall apply to taxes, or any portion thereof, which remain or
41 become due on or after the date on which such rate becomes effective and
42 shall apply only with respect to interest computed or computable for
43 periods or portions of periods occurring in the period in which such
44 rate is in effect.

45 (B) General rule. The rate of interest set under this subdivision
46 shall be the sum of (i) the federal short-term rate as provided under
47 paragraph three of this subdivision, plus (ii) seven percentage points.

48 (3) Federal short-term rate. For purposes of this subdivision:

49 (A) The federal short-term rate for any month shall be the federal
50 short-term rate determined by the United States secretary of the treas-
51 ury during such month in accordance with subsection (d) of section
52 twelve hundred seventy-four of the internal revenue code for use in
53 connection with section six thousand six hundred twenty-one of the
54 internal revenue code. Any such rate shall be rounded to the nearest
55 full percent, or, if a multiple of one-half of one percent, such rate
56 shall be increased to the next highest full percent.

1 (B) Period during which rate applies.

2 (i) In general. Except as provided in clause (ii) of this subpara-
3 graph, the federal short-term rate for the first month in each calendar
4 quarter shall apply during the first calendar quarter beginning after
5 such month.

6 (ii) Special rule for the month of September, nineteen hundred eight-
7 y-nine. The federal short-term rate for the month of April, nineteen
8 hundred eighty-nine shall apply with respect to setting the rate of
9 interest for the month of September, nineteen hundred eighty-nine.

10 (4) Publication of interest rate. The commissioner of finance shall
11 cause to be published in the City Record, and give other appropriate
12 general notice of, the interest rate to be set under this subdivision no
13 later than twenty days preceding the first day of the calendar quarter
14 during which such interest rate applies. The setting and publication of
15 such interest rate shall not be included within paragraph (a) of subdi-
16 vision five of section one thousand forty-one of the charter of the
17 preceding municipality as it existed January first, nineteen hundred
18 ninety-four relating to the definition of a rule.

19 e. Cross-reference: For criminal penalties, see chapter forty of this
20 title.

21 § 11-1318 Disposition of revenues. a. All revenues resulting from the
22 imposition of the tax under section 11-1302 of this chapter shall be
23 paid into the treasury of the city and shall be credited to and deposit-
24 ed in the general fund of the city, except that, after the payment of
25 refunds with respect to such tax, effective on and after July second,
26 two thousand two, forty-six and one-half percent and, effective on and
27 after April first, two thousand three, forty-six percent of such reven-
28 ues, including taxes, interest and penalties, collected or received
29 shall be paid to the state comptroller.

30 (b) All revenues resulting from the imposition of the tax under
31 section 11-1302.1 of this chapter during a fiscal year, including any
32 interest and penalties, shall be paid into the treasury of the city in
33 accordance with section one hundred twelve of the public housing law,
34 and shall be payable from the city to the New York city housing authori-
35 ty in such fiscal year.

36 § 11-1319 Construction and enforcement. Section 11-1302 and the
37 provisions of this chapter related thereto shall be construed and
38 enforced in conformity with chapter two hundred thirty-five of the laws
39 of nineteen hundred fifty-two. Section 11-1302.1 and the provisions of
40 this chapter related thereto shall be construed and enforced in conform-
41 ity with subdivision e of section one hundred ten and sections one
42 hundred eleven, one hundred twelve and one hundred thirteen of the
43 public housing law.

44 CHAPTER 14

45 TAX ON TRANSFER OF TAXICAB LICENSES

46 § 11-1401 Definitions. When used in this chapter the following terms
47 shall mean or include:

48 1. "City." The city of Staten Island.

49 2. "Commissioner of finance." The commissioner of finance of the
50 city of Staten Island.

51 3. "Comptroller." The comptroller of the city of Staten Island.

52 4. "Consideration." The total price paid or agreed to be paid for
53 the transfer of a taxicab license or interest therein, whether paid or
54 agreed to be paid in money, property, or any other thing of value,

1 including the cancellation or discharge of an indebtedness or obli-
2 gation, without any deduction whatsoever.

3 5. "Person." An individual, partnership, society, association,
4 joint-stock company, corporation, estate, receiver, trustee, assignee,
5 referee or any other person acting in a fiduciary or representative
6 capacity, whether appointed by a court or otherwise, any combination of
7 individuals, and any other form of unincorporated enterprise owned or
8 conducted by two or more persons.

9 6. "Taxi and limousine commission." The city of Staten Island taxi
10 and limousine commission.

11 7. "Taxicab." Any motor vehicle carrying passengers for hire in the
12 city, duly licensed as a taxicab by the taxi and limousine commission,
13 and permitted to accept hails from passengers in the street.

14 8. "Taxicab license." A license issued by the taxi and limousine
15 commission to operate a taxicab.

16 9. "Taxpayer." Any person subject to tax under this chapter.

17 10. "Transfer." Any transfer of interest, whether or not such inter-
18 est constitutes title, or possession, or both, exchange or barter,
19 rental, lease, or license to use, conditional or otherwise, in any
20 manner or by any means whatsoever for a consideration, or any agreement
21 therefor.

22 11. "Transferee." The person to whom a taxicab license or interest
23 therein is transferred, in a transfer as defined in subdivision ten of
24 this section.

25 12. "Transferor." The person who transfers a taxicab license or
26 interest pursuant to this chapter, in a transfer as defined in subdivi-
27 sion ten of this section.

28 13. "Tax appeals tribunal." The tax appeals tribunal established by
29 section one hundred sixty-eight of the charter of the preceding munici-
30 pality as it existed January first, nineteen hundred ninety-four.

31 § 11-1402 Imposition of tax. a. On and after March twenty-first,
32 two thousand seventeen, there is hereby imposed and there shall be paid
33 a tax on each transfer of a taxicab license or interest therein, at the
34 rate of one-half percent of the consideration given for such transfer.

35 b. Where there is a transfer of the economic interest in a taxicab
36 license or interest therein, effected by the transfer of shares of stock
37 of a corporation which hold such taxicab license or interest therein or
38 by the transfer of an interest or interests in a partnership or associ-
39 ation which holds such taxicab license or interest therein, such trans-
40 fer of shares of stock or of an interest or interests in a partnership
41 or association shall be treated as a transfer of the taxicab license or
42 interest therein, and shall be subject to the tax imposed by subdivision
43 a of this section.

44 c. Notwithstanding any other provision of this chapter, the tax
45 imposed hereby shall not apply to a transfer made pursuant to a bona
46 fide written contract or agreement made and executed prior to July
47 first, nineteen hundred eighty, provided such contract or agreement is
48 registered with the taxi and limousine commission prior to July first,
49 nineteen hundred eighty, and provided further that one or more payments
50 were made pursuant to such contract or agreement on or before June twen-
51 tieth, nineteen hundred eighty.

52 d. Where a taxicab or any other property is transferred to a trans-
53 feree in conjunction with the transfer of a taxicab license or interest
54 therein, the tax imposed by this section shall be computed on the total
55 consideration for the transfer of such license or interest therein and

1 the taxicab or other property so transferred, less the fair market value
2 of such taxicab or other property.

3 e. The tax imposed by this chapter shall be in addition to any and
4 all other taxes.

5 § 11-1403 Payment of tax. The tax imposed by this chapter shall be
6 paid by the transferee to the taxi and limousine commission, as agent of
7 the commissioner of finance, at the time of approval of such transfer by
8 the taxi and limousine commission, but in no event later than thirty
9 days following the transfer. The transferor shall also be liable for the
10 payment of such tax at such time in the event that the amount of tax due
11 is not paid by the transferee. Notwithstanding any other provision of
12 law to the contrary, no transfer of a taxicab license or interest there-
13 in shall be approved or effective until the tax imposed by this chapter
14 has been paid. All moneys received as such payments by the taxi and
15 limousine commission during any day shall be transmitted to the commis-
16 sioner of finance at the close of business on such day or at such other
17 time as the commissioner of finance may require.

18 § 11-1404 Returns. a. A joint return shall be filed by both the
19 transferee and the transferor. Such return shall be filed at the time of
20 payment of any tax imposed pursuant to this chapter, and such filing
21 shall be accomplished by delivering the return to the taxi and limousine
22 commission for transmittal to the commissioner of finance. The commis-
23 sioner of finance shall prescribe the form of the return and the infor-
24 mation which it shall contain. The return shall be signed under oath by
25 both the transferee and the transferor. Where either the transferee or
26 the transferor has failed to sign the return, it shall be accepted as a
27 return, but the party who has failed to sign the return or file a sepa-
28 rate return shall be subject to the penalties applicable to a person who
29 has failed to file a return, and the period of limitations for assess-
30 ment of tax or of additional tax shall not apply to such party.

31 b. Returns shall be preserved for three years and thereafter until the
32 commissioner of finance permits them to be destroyed.

33 c. The commissioner of finance may require amended returns to be filed
34 within twenty days after notice and to contain the information specified
35 in the notice.

36 d. If a return required by this chapter is not filed, or if a return,
37 when filed, is incorrect or insufficient on its face, the commissioner
38 of finance shall take the necessary steps to enforce the filing of such
39 a return or of a corrected return.

40 § 11-1405 Exemptions. a. The tax imposed under this chapter shall not
41 be imposed on any transaction by or with the following:

42 1. The state of New York, or any of its agencies, instrumentalities,
43 public corporations, including a public corporation created pursuant to
44 agreement or compact with another state or Canada, or political subdivi-
45 sions where it is the purchaser, user or consumer;

46 2. The United States of America, and any of its agencies and instru-
47 mentalities insofar as it is immune from taxation where it is the
48 purchaser, user or consumer;

49 3. The United Nations or other international organizations of which
50 the United States of America is a member; and

51 4. Any corporation, or association, or trust, or community chest, fund
52 or foundation, organized and operated exclusively for religious, chari-
53 table, or educational purposes, or for the prevention of cruelty to
54 children or animals, and no part of the net earnings of which inures to
55 the benefit of any private shareholder or individual, and no substantial
56 part of the activities of which is carrying on propaganda, or otherwise

1 attempting to influence legislation; provided, however, that nothing in
2 this paragraph shall include an organization operated for the primary
3 purpose of carrying on a trade or business for profit, whether or not
4 all of its profits are payable to one or more organizations described in
5 this subdivision.

6 b. The tax imposed by this chapter shall not apply to the transfer of
7 a taxicab license or interest therein by means of a lease, license or
8 other rental arrangement, where the term of such lease, license or other
9 rental arrangement, including the maximum period for which it can be
10 extended or renewed, does not exceed six months.

11 § 11-1406 Determination of tax. If a return required by this chapter
12 is not filed, or if a return when filed is incorrect or insufficient,
13 the amount of tax due shall be determined by the commissioner of finance
14 from external indices and such other information as may be obtainable.
15 Notice of such determination shall be given to the person liable for the
16 tax. Such determination shall finally and irrevocably fix the tax unless
17 the person against whom it is assessed, within ninety days after the
18 giving of notice of such determination, or, if the commissioner of
19 finance has established a conciliation procedure pursuant to section
20 11-124 of this title and the taxpayer has requested a conciliation
21 conference in accordance therewith, within ninety days from the mailing
22 of a conciliation decision or the date of the commissioner's confirma-
23 tion of the discontinuance of the conciliation proceeding, both (1)
24 serves a petition upon the commissioner of finance and (2) files a peti-
25 tion with the tax appeals tribunal for a hearing, or unless the commis-
26 sioner of finance of his or her own motion shall redetermine the same.
27 Such hearing and any appeal to the tax appeals tribunal sitting en banc
28 from the decision rendered in such hearing shall be conducted in the
29 manner and subject to the requirements prescribed by the tax appeals
30 tribunal pursuant to sections one hundred sixty-eight through one
31 hundred seventy-two of the charter of the preceding municipality as it
32 existed January first, nineteen hundred ninety-four. After such hearing
33 the tax appeals tribunal shall give notice of its decision to the person
34 against whom the tax is assessed and to the commissioner of finance. A
35 decision of the tax appeals tribunal sitting en banc shall be reviewable
36 for error, illegality or unconstitutionality or any other reason whatso-
37 ever by a proceeding under article seventy-eight of the civil practice
38 law and rules if application therefor is made to the supreme court by
39 the person against whom the tax was assessed within four months after
40 the giving of the notice of such tax appeals tribunal decision. A
41 proceeding under article seventy-eight of the civil practice law and
42 rules shall not be instituted by a taxpayer unless: (a) the amount of
43 any tax sought to be reviewed, with penalties and interest thereon, if
44 any, shall be first deposited with the commissioner of finance and there
45 shall be filed with the commissioner of finance an undertaking, issued
46 by a surety company authorized to transact business in this state and
47 approved by the superintendent of insurance of this state as to solvency
48 and responsibility, in such amount and with such sureties as a justice
49 of the supreme court shall approve, to the effect that if such proceed-
50 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
51 and charges which may accrue in the prosecution of the proceeding; or
52 (b) at the option of the taxpayer such undertaking filed with the
53 commissioner of finance may be in a sum sufficient to cover the taxes,
54 penalties and interest thereon stated in such decision plus the costs
55 and charges which may accrue against it in the prosecution of the
56 proceeding, in which event the taxpayer shall not be required to deposit

1 such taxes, penalties and interest as a condition precedent to the
2 application.

3 § 11-1407 Refunds. a. In the manner provided in this section the
4 commissioner of finance shall refund or credit, without interest, any
5 tax, penalty or interest erroneously, illegally or unconstitutionally
6 collected or paid if application to the commissioner of finance for such
7 refund shall be made within one year from the payment thereof. Whenever
8 a refund is made or denied by the commissioner of finance, the commis-
9 sioner shall state his or her reason therefor and give notice thereof to
10 the taxpayer in writing. Such application may be made by the transferee
11 or transferor who has actually paid the tax. The commissioner of
12 finance may, in lieu of any refund required to be made, allow credit
13 therefor on payments due from the applicant.

14 b. Any determination of the commissioner of finance denying a refund
15 or credit pursuant to subdivision a of this section shall be final and
16 irrevocable unless the applicant for such refund or credit, within nine-
17 ty days from the mailing of notice of such determination, or, if the
18 commissioner of finance has established a conciliation procedure pursu-
19 ant to section 11-124 of this title and the applicant has requested a
20 conciliation conference in accordance therewith, within ninety days from
21 the mailing of a conciliation decision or the date of the commissioner's
22 confirmation of the discontinuance of the conciliation proceeding, both
23 (1) serves a petition upon the commissioner of finance and (2) files a
24 petition with the tax appeals tribunal for a hearing. Such petition for
25 a refund or credit, made pursuant to this section, shall be deemed an
26 application for a revision of any tax, penalty or interest complained
27 of. Such hearing and any appeal to the tax appeals tribunal sitting en
28 banc from the decision rendered in such hearing shall be conducted in
29 the manner and subject to the requirements prescribed by the tax appeals
30 tribunal pursuant to sections one hundred sixty-eight through one
31 hundred seventy-two of the charter of the preceding municipality as it
32 existed January first, nineteen hundred ninety-four. After such hearing,
33 the tax appeals tribunal shall give notice of its decision to the appli-
34 cant and to the commissioner of finance. The applicant shall be entitled
35 to review a decision of the tax appeals tribunal sitting en banc by a
36 proceeding pursuant to article seventy-eight of the civil practice law
37 and rules, provided such proceeding is instituted within four months
38 after the giving of notice of such decision, and provided, in the case
39 of an application by a taxpayer, that a final determination of tax due
40 was not previously made. Such a proceeding shall not be instituted by a
41 taxpayer unless an undertaking is filed with the commissioner of finance
42 in such amount and with such sureties as a justice of the supreme court
43 shall approve to the effect that if such proceeding be dismissed or the
44 tax confirmed, the taxpayer will pay all costs and charges which may
45 accrue in the prosecution of such proceeding.

46 c. A person shall not be entitled to a revision, refund or credit
47 under this section of a tax, or penalty which had been determined to be
48 due pursuant to the provisions of section 11-1406 of this chapter where
49 such person has had a hearing or an opportunity for a hearing, as
50 provided in said section, or has failed to avail himself or herself of
51 the remedies therein provided. No refund or credit shall be made of a
52 tax, interest or penalty paid after a determination by the commissioner
53 of finance made pursuant to section 11-1406 of this chapter unless it be
54 found that such determination was erroneous, illegal or unconstitutional
55 or otherwise improper, by the tax appeals tribunal after a hearing, or
56 on the commissioner's own motion, or, is such tax appeals tribunal

1 affirms in whole or in part the determination of the commissioner of
2 finance, in a proceeding under article seventy-eight of the civil prac-
3 tice law and rules, pursuant to the provisions of said section, in which
4 event refund or credit without interest shall be made of the tax, inter-
5 est or penalty found to be overpaid.

6 § 11-1408 Reserves. In cases where the transferee or transferor has
7 applied for a refund and has instituted a proceeding under article
8 seventy-eight of the civil practice law and rules to review a determi-
9 nation adverse to the transferee or transferor on his or her applicati-
10 on for refund, the comptroller shall set up appropriate reserves to meet
11 any decisions adverse to the city.

12 § 11-1409 Remedies exclusive. The remedies provided by sections
13 11-1406 and 11-1407 of this chapter shall be the exclusive remedies
14 available to any person for the review of tax liability imposed by this
15 chapter; and no determination or proposed determination of tax or deter-
16 mination on any application for refund by the commissioner of finance,
17 nor any decision by the tax appeals tribunal or any of its administra-
18 tive law judges shall be enjoined or reviewed by an action for declara-
19 tory judgment, an action for money had and received or by any action or
20 proceeding other than, in the case of a decision by the tax appeals
21 tribunal sitting en banc, a proceeding in the nature of a certiorari
22 proceeding under article seventy-eight of the civil practice law and
23 rules; provided, however, that a taxpayer may proceed by declaratory
24 judgment if the taxpayer institutes suit within thirty days after a
25 deficiency assessment is made and pays the amount of the deficiency
26 assessment to the commissioner of finance prior to the institution of
27 such suit and posts a bond for costs as provided in section 11-1406 of
28 this chapter.

29 § 11-1410 Proceedings to recover tax. a. Whenever any transferee or
30 transferor shall fail to pay any tax, penalty or interest imposed by
31 this chapter as herein provided, the corporation counsel shall, upon the
32 request of the commissioner of finance bring or cause to be brought an
33 action to enforce the payment of the same on behalf of the city of
34 Staten Island in any court of the state of New York or of any other
35 state or of the United States. If, however, the commissioner of finance
36 in his or her discretion believes that any such transferee or transferor
37 subject to the provisions of this chapter is about to cease business,
38 leave the state or remove or dissipate the assets out of which the tax
39 or penalty might be satisfied, and that any such tax or penalty will not
40 be paid when due, the commissioner may declare such tax or penalty to be
41 immediately due and payable and may issue a warrant immediately.

42 b. As an additional or alternate remedy, the commissioner of finance
43 may issue a warrant, directed to the city sheriff commanding the sheriff
44 to levy upon and sell the real and personal property of the transferee
45 or transferor or other person liable for the tax which may be found
46 within the city, for the payment of the amount thereof, with any penalty
47 and interest, and the cost of executing the warrant, and to return such
48 warrant to the commissioner of finance and to pay to the commissioner
49 the money collected by virtue thereof within sixty days after the
50 receipt of such warrant. The city sheriff shall within five days after
51 the receipt of the warrant file with the county clerk a copy thereof,
52 and thereupon such clerk shall enter in the judgment docket the name of
53 the person mentioned in the warrant and the amount of the tax, penalty
54 and interest for which the warrant is issued and the date when such copy
55 is filed. Thereupon the amount of such warrant so docketed shall become
56 a lien upon the title to and the interest in real and personal property

1 of the person against whom the warrant is issued. The city sheriff shall
2 then proceed upon the warrant in the same manner, and with like effect,
3 as that provided by law in respect to executions issued against property
4 upon judgments of a court of record and for services in executing the
5 warrant the sheriff shall be entitled to the same fees, which he or she
6 may collect in the same manner. In the discretion of the commissioner of
7 finance a warrant of like terms, force and effect may be issued and
8 directed to an officer or employee of the department of finance, and in
9 the execution thereof such officer or employee shall have all the powers
10 conferred by law upon sheriffs, but shall be entitled to no fee or
11 compensation in excess of the actual expenses paid in the performance of
12 such duty. If a warrant is returned not satisfied in full, the commis-
13 sioner of finance may from time to time issue new warrants and shall
14 also have the same remedies to enforce the amount due thereunder as if
15 the city had recovered judgment therefor and execution thereon had been
16 returned unsatisfied.

17 c. Whenever there is made a sale, transfer or assignment in bulk or
18 any part of the whole of a stock of merchandise or of fixtures, or
19 merchandise and of fixtures pertaining to the conducting of the business
20 of the seller, transferor or assignor, otherwise than in the ordinary
21 course of trade and in the regular prosecution of said business, the
22 purchaser, transferee or assignee shall at least ten days before taking
23 possession of such merchandise, fixtures, or merchandise and fixtures,
24 or paying therefor, notify the commissioner of finance by registered
25 mail of the proposed sale and of the price, terms and conditions thereof
26 whether or not the seller, transferor or assignor, has represented to,
27 or informed the purchaser, transferee or assignee that it owes any tax
28 pursuant to this chapter and whether or not the purchaser, transferee or
29 assignee has knowledge that such taxes are owing, and whether any such
30 taxes are in fact owing.

31 d. Whenever, the purchaser, transferee or assignee shall fail to give
32 notice to the commissioner of finance as required by subdivision c of
33 this section, or whenever the commissioner of finance shall inform the
34 purchaser, transferee or assignee that a possible claim for such tax or
35 taxes exists, any sums of money, property or choses in action, or other
36 consideration, which the purchaser, transferee or assignee is required
37 to transfer over to the seller or assignor shall be subject to a first
38 priority right and lien for any such taxes theretofore or thereafter
39 determined to be due from the seller, transferor or assignor to the
40 city, and the purchaser, transferee or assignee is forbidden to transfer
41 to the seller, transferor or assignor any such sums of money, property
42 or choses in action to the extent of the amount of the city's claim. For
43 failure to comply with the provisions of this subdivision, the purchas-
44 er, transferee or assignee shall be personally liable for the payment to
45 the city of any such taxes theretofore or thereafter determined to be
46 due to the city from the seller, transferor or assignor, and such
47 liability may be assessed and enforced in the same manner as the liabil-
48 ity for tax under this chapter.

49 e. The commissioner of finance, if he or she finds that the interests
50 of the city will not thereby be jeopardized, and upon such conditions as
51 the commissioner of finance may require, may release any property from
52 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
53 tions to tax, penalties and interest filed pursuant to subdivision b of
54 this section, and such release or vacating of the warrant may be
55 recorded in the office of any recording officer in which such warrant

1 has been filed. The clerk shall thereupon cancel and discharge as of the
2 original date of docketing the vacated warrant.

3 § 11-1411 General powers of the commissioner of finance. In addition
4 to the powers granted to the commissioner of finance in this chapter, he
5 or she is hereby authorized and empowered:

6 1. To make, adopt and amend rules and regulations appropriate to the
7 carrying out of this chapter and the purposes thereof;

8 2. To extend, for cause shown, the time for filing any return for a
9 period not exceeding ninety days; and to compromise disputed claims in
10 connection with the taxes imposed under this chapter;

11 3. To request information from the taxi and limousine commission, the
12 tax commission of the state of New York or the treasury department of
13 the United States relative to any person; and to afford returns, reports
14 and other information to such taxi and limousine commission, tax commis-
15 sion or treasury department relative to any person, any other provision
16 of this chapter to the contrary notwithstanding;

17 4. To delegate his or her functions hereunder to a deputy commissioner
18 of finance or any employee or employees of the department of finance;

19 5. To prescribe the methods for determining the consideration subject
20 to the tax, and if there is a transfer of a taxicab or other property in
21 conjunction with the transfer of a taxicab license or interest therein,
22 to prescribe rules and methods for determining the fair market value of
23 such taxicab or other property;

24 6. To require any transferee or transferor to keep such records, and
25 for such lengths of time as may be required for the proper adminis-
26 tration of this chapter and to furnish such records to the commissioner
27 of finance or the taxi and limousine commission upon request;

28 7. To assess, determine, revise and adjust the taxes imposed under
29 this chapter.

30 § 11-1412 Administration of oaths and compelling testimony. a. The
31 commissioner of finance, the employees or agents duly designated by him
32 or her, the tax appeals tribunal and any of its duly designated and
33 authorized employees or agents shall have power to administer oaths and
34 take affidavits in relation to any matter or proceeding in the exercise
35 of their powers and duties under this chapter. The commissioner of
36 finance and the tax appeals tribunal shall have power to subpoena and
37 require the attendance of witnesses and the production of books, papers
38 and documents to secure information pertinent to the performance of the
39 duties of the commissioner or of the tax appeals tribunal hereunder and
40 of the enforcement of this chapter and to examine them in relation ther-
41 eto, and to issue commissions for the examination of witnesses who are
42 out of the state or unable to attend before the commissioner or the tax
43 appeals tribunal or excused from attendance.

44 b. A justice of the supreme court either in court or at chambers shall
45 have power summarily to enforce by proper proceedings the attendance and
46 testimony of witnesses and the production and examination of books,
47 papers and documents called for by the subpoena of the commissioner of
48 finance or the tax appeals tribunal under this chapter.

49 c. Cross-reference; criminal penalties. For failure to obey subpoenas
50 or for testifying falsely, see section 11-4007 of this title; for
51 supplying false or fraudulent information, see section 11-4009 of this
52 title.

53 d. The officers who serve the summons or subpoena of the commissioner
54 of finance or the tax appeals tribunal and witnesses attending in
55 response thereto shall be entitled to the same fees as are allowed to
56 officers and witnesses in civil cases in courts of record, except as

1 herein otherwise provided. Such officers shall be the city sheriff and
2 his or her duly appointed deputies or any officers or employees of the
3 department of finance or the tax appeals tribunal, designated to serve
4 such process.

5 § 11-1413 Interest and penalties. (a) Interest on underpayments. If
6 any amount of tax is not paid on or before the last date prescribed for
7 payment, without regard to any extension of time granted for payment,
8 interest on such amount at the rate set by the commissioner of finance
9 pursuant to subdivision (g) of this section, or, if no rate is set, at
10 the rate of seven and one-half percent per annum, shall be paid for the
11 period from such last date to the date of payment. In computing the
12 amount of interest to be paid, such interest shall be compounded daily.
13 Interest under this subdivision shall not be paid if the amount thereof
14 is less than one dollar.

15 (b) (1) Failure to file return. (A) In case of failure to file a
16 return under this chapter on or before the prescribed date, determined
17 with regard to any extension of time for filing, unless it is shown that
18 such failure is due to reasonable cause and not due to willful neglect,
19 there shall be added to the amount required to be shown as tax on such
20 return five percent of the amount of such tax if the failure is for not
21 more than one month, with an additional five percent for each additional
22 month or fraction thereof during which such failure continues, not
23 exceeding twenty-five percent in the aggregate.

24 (B) In the case of a failure to file a return of tax within sixty days
25 of the date prescribed for filing of such return, determined with regard
26 to any extension of time for filing, unless it is shown that such fail-
27 ure is due to reasonable cause and not due to willful neglect, the addi-
28 tion to tax under subparagraph (A) of this paragraph shall not be less
29 than the lesser of one hundred dollars or one hundred percent of the
30 amount required to be shown as tax on such return.

31 (C) For purposes of this paragraph, the amount of tax required to be
32 shown on the return shall be reduced by the amount of any part of the
33 tax which is paid on or before the date prescribed for payment of the
34 tax and by the amount of any credit against the tax which may be claimed
35 upon the return.

36 (2) Failure to pay tax shown on return. In case of failure to pay the
37 amount shown as tax on a return required to be filed under this chapter
38 on or before the prescribed date, determined with regard to any exten-
39 sion of time for payment, unless it is shown that such failure is due to
40 reasonable cause and not due to willful neglect, there shall be added to
41 the amount shown as tax on such return one-half of one percent of the
42 amount of such tax if the failure is not for more than one month, with
43 an additional one-half of one percent for each additional month or frac-
44 tion thereof during which such failure continues, not exceeding twenty-
45 five percent in the aggregate. For the purpose of computing the addition
46 for any month the amount of tax shown on the return shall be reduced by
47 the amount of any part of the tax which is paid on or before the begin-
48 ning of such month and by the amount of any credit against the tax which
49 may be claimed upon the return. If the amount of tax required to be
50 shown on a return is less than the amount shown as tax on such return,
51 this paragraph shall be applied by substituting such lower amount.

52 (3) Failure to pay tax required to be shown on return. In case of
53 failure to pay any amount in respect of any tax required to be shown on
54 a return required to be filed under this chapter which is not so shown,
55 including a determination made pursuant to section 11-1406 of this chap-
56 ter, within ten days of the date of a notice and demand therefor, unless

1 it is shown that such failure is due to reasonable cause and not due to
2 willful neglect, there shall be added to the amount of tax stated in
3 such notice and demand one-half of one percent of such tax if the fail-
4 ure is not for more than one month, with an additional one-half of one
5 percent for each additional month or fraction thereof during which such
6 failure continues, not exceeding twenty-five percent in the aggregate.
7 For the purpose of computing the addition for any month, the amount of
8 tax stated in the notice and demand shall be reduced by the amount of
9 any part of the tax which is paid before the beginning of such month.

10 (4) Limitations on additions.

11 (A) With respect to any return, the amount of the addition under para-
12 graph one of this subdivision shall be reduced by the amount of the
13 addition under paragraph two of this subdivision for any month to which
14 an addition applies under both paragraphs one and two. In any case
15 described in subparagraph (B) of paragraph one of this subdivision, the
16 amount of the addition under such paragraph one shall not be reduced
17 below the amount provided in such subparagraph.

18 (B) With respect to any return, the maximum amount of the addition
19 permitted under paragraph three of this subdivision shall be reduced by
20 the amount of the addition under paragraph one of this subdivision,
21 determined without regard to subparagraph (B) of such paragraph one,
22 which is attributable to the tax for which the notice and demand is made
23 and which is not paid within ten days of such notice and demand.

24 (c) Underpayment due to negligence. (1) If any part of an underpay-
25 ment of tax is due to negligence or intentional disregard of this chap-
26 ter or any rules or regulations hereunder, but without intent to
27 defraud, there shall be added to the tax a penalty equal to five percent
28 of the underpayment.

29 (2) There shall be added to the tax, in addition to the amount deter-
30 mined under paragraph one of this subdivision, an amount equal to fifty
31 percent of the interest payable under subdivision (a) of this section
32 with respect to the portion of the underpayment described in such para-
33 graph one which is attributable to the negligence or intentional disre-
34 gard referred to in such paragraph one, for the period beginning on the
35 last date prescribed by law for payment of such underpayment, determined
36 without regard to any extension, and ending on the date of the assess-
37 ment of the tax, or, if earlier, the date of the payment of the tax.

38 (d) Underpayment due to fraud. (1) If any part of an underpayment of
39 tax is due to fraud, there shall be added to the tax a penalty equal to
40 fifty percent of the underpayment.

41 (2) There shall be added to the tax, in addition to the penalty deter-
42 mined under paragraph one of this subdivision, an amount equal to fifty
43 percent of the interest payable under subdivision (a) of this section
44 with respect to the portion of the underpayment described in such para-
45 graph one which is attributable to fraud, for the period beginning on
46 the last day prescribed by law for payment of such underpayment, deter-
47 mined without regard to any extension, and ending on the date of the
48 assessment of the tax, or, if earlier, the date of the payment of the
49 tax.

50 (3) The penalty under this subdivision shall be in lieu of any other
51 addition to tax imposed by subdivision (b) or (c) of this section.

52 (e) Additional penalty. Any person who, with fraudulent intent, shall
53 fail to pay any tax imposed by this chapter, or to make, render, sign or
54 certify any return, or to supply any information within the time
55 required by or under this chapter, shall be liable for a penalty of not
56 more than one thousand dollars, in addition to any other amounts

1 required under this chapter to be imposed, assessed and collected by the
2 commissioner of finance. The commissioner of finance shall have the
3 power, in his or her discretion, to waive, reduce or compromise any
4 penalty under this subdivision.

5 (f) The interest and penalties imposed by this section shall be paid
6 and disposed of in the same manner as other revenues from this chapter.
7 Unpaid interest and penalties may be enforced in the same manner as the
8 tax imposed by this chapter.

9 (g)(1) Authority to set interest rates. The commissioner of finance
10 shall set the rate of interest to be paid pursuant to subdivision (a) of
11 this section, but if no such rate of interest is set, such rate shall be
12 deemed to be set at seven and one-half percent per annum. Such rate
13 shall be the rate prescribed in paragraph two of this subdivision but
14 shall not be less than seven and one-half percent per annum. Any such
15 rate set by the commissioner of finance shall apply to taxes, or any
16 portion thereof, which remain or become due on or after the date on
17 which such rate becomes effective and shall apply only with respect to
18 interest computed or computable for periods or portions of periods
19 occurring in the period in which such rate is in effect.

20 (2) General rule. The rate of interest set under this subdivision
21 shall be the sum of (i) the federal short-term rate as provided under
22 paragraph three of this subdivision, plus (ii) seven percentage points.

23 (3) Federal short-term rate. For purposes of this subdivision:

24 (A) The federal short-term rate for any month shall be the federal
25 short-term rate determined by the United States secretary of the treas-
26 ury during such month in accordance with subsection (d) of section
27 twelve hundred seventy-four of the internal revenue code for use in
28 connection with section six thousand six hundred twenty-one of the
29 internal revenue code. Any such rate shall be rounded to the nearest
30 full percent, or, if a multiple of one-half of one percent, such rate
31 shall be increased to the next highest full percent.

32 (B) Period during which rate applies.

33 (i) In general. Except as provided in clause (ii) of this subpara-
34 graph, the federal short-term rate for the first month in each calendar
35 quarter shall apply during the first calendar quarter beginning after
36 such month.

37 (ii) Special rule for the month of September, nineteen hundred eight-
38 y-nine. The federal short-term rate for the month of April, nineteen
39 hundred eighty-nine shall apply with respect to setting the rate of
40 interest for the month of September, nineteen hundred eighty-nine.

41 (4) Publication of interest rate. The commissioner of finance shall
42 cause to be published in the City Record, and give other appropriate
43 general notice of, the interest rate to be set under this subdivision no
44 later than twenty days preceding the first day of the calendar quarter
45 during which such interest rate applies. The setting and publication of
46 such interest rate shall not be included within paragraph (a) of subdi-
47 vision five of section one thousand forty-one of the charter of the
48 preceding municipality as it existed January first, nineteen hundred
49 ninety-four relating to the definition of a rule.

50 (h) Miscellaneous. (1) The certificate of the commissioner of finance
51 to the effect that a tax has not been paid or that information has not
52 been supplied pursuant to the provisions of this chapter shall be
53 presumptive evidence thereof.

54 (2) Cross-reference: For criminal penalties, see chapter forty of this
55 title.

1 § 11-1414 Returns to be secret. a. Except in accordance with proper
2 judicial order or as otherwise provided by law, it shall be unlawful for
3 the commissioner of finance, the chairperson of the taxi and limousine
4 commission, the tax appeals tribunal or any officer or employee of the
5 department of finance or taxi and limousine commission or the tax
6 appeals tribunal, to divulge or make known in any manner any information
7 contained in or relating to any return provided for by this chapter. The
8 officers charged with the custody of such returns shall not be required
9 to produce any of them or evidence of anything contained in them in any
10 action or proceeding in any court, except on behalf of the commissioner
11 of finance in an action or proceeding under the provisions of this chap-
12 ter, or on behalf of any party to an action or proceeding under the
13 provisions of this chapter when the returns or facts shown thereby are
14 directly involved in such action or proceeding, in either of which
15 events the court may require the production of, and may admit in
16 evidence, so much of said returns or of the facts shown thereby, as are
17 pertinent to the action or proceeding and no more. Nothing in this
18 section shall be construed to prohibit the delivery to a transferee or
19 transferor or to the duly authorized representative of either of them of
20 a certified copy of any return filed in connection with the tax imposed
21 by this chapter; nor to prohibit the delivery of such a certified copy
22 of such return or of any information contained in or relating thereto to
23 the United States of America or any department thereof, the state of New
24 York or any department thereof, the city of Staten Island or any depart-
25 ment thereof provided the same is required for official business; nor to
26 prohibit the inspection for official business of such returns by the
27 chairperson of the taxi and limousine commission, the corporation coun-
28 sel or other legal representatives of the city or by the district attor-
29 ney of Richmond county; nor to prohibit the publication of statistics so
30 classified as to prevent the identification of particular returns or
31 items thereof.

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

36 (2) Cross-reference: For criminal penalties, see chapter forty of this
37 title.

38 c. This section shall be deemed a state statute for purposes of para-
39 graph (a) of subdivision two of section eighty-seven of the public offi-
40 cers law.

41 d. Notwithstanding anything in subdivision a of this section to the
42 contrary, if a taxpayer has petitioned the tax appeals tribunal for
43 administrative review as provided in section one hundred seventy of the
44 charter of the preceding municipality as it existed January first, nine-
45 teen hundred ninety-four, the commissioner of finance shall be author-
46 ized to present to the tribunal any report or return of such taxpayer,
47 or any information contained therein or relating thereto, which may be
48 material or relevant to the proceeding before the tribunal. The tax
49 appeals tribunal shall be authorized to publish a copy or a summary of
50 any decision rendered pursuant to section one hundred seventy-one of the
51 charter of the preceding municipality as it existed January first, nine-
52 teen hundred ninety-four.

53 § 11-1415 Notices and limitations of time. a. Any notice authorized
54 or required under the provisions of this chapter may be given by mailing
55 the same to the person for whom it is intended in a postpaid envelope
56 addressed to such person at the address given in the last return filed

1 by such person pursuant to the provisions of this chapter, in any appli-
2 cation made by such person, or in the records maintained by the taxi and
3 limousine commission, or, if no return has been filed or application
4 made or address found in the records of the taxi and limousine commis-
5 sion, then to such address as may be obtainable. The mailing of such
6 notice shall be presumptive evidence of the receipt of the same by the
7 person to whom addressed. Any period of time which is determined accord-
8 ing to the provisions of this chapter by the giving of notice shall
9 commence to run from the date of mailing of such notice.

10 b. The provisions of the civil practice law and rules or any other law
11 relative to limitations of time for the enforcement of a civil remedy
12 shall not apply to any proceeding or action taken by the city to levy,
13 appraise, assess, determine or enforce the collection of any tax or
14 penalty provided by this chapter. However, except in the case of a
15 wilfully false or fraudulent return with intent to evade the tax, no
16 assessment of additional tax shall be made after the expiration of more
17 than three years from the date of the filing of a return; provided,
18 however, that where no return has been filed as provided by law the tax
19 may be assessed at any time.

20 c. Where, before the expiration of the period prescribed herein for
21 the assessment of an additional tax, a taxpayer has consented in writing
22 that such period be extended, the amount of such additional tax due may
23 be determined at any time within such extended period. The period so
24 extended may be further extended by subsequent consents in writing made
25 before the expiration of the extended period.

26 d. If any return, claim, statement, notice, application, or other
27 document required to be filed, or any payment required to be made, with-
28 in a prescribed period or on or before a prescribed date under authority
29 of any provision of this chapter is, after such period or such date,
30 delivered by United States mail to the commissioner of finance, the tax
31 appeals tribunal, bureau, office, officer or person with which or with
32 whom such document is required to be filed, or to which or to whom such
33 payment is required to be made, the date of the United States postmark
34 stamped on the envelope shall be deemed to be the date of delivery. This
35 subdivision shall apply only if the postmark date falls within the
36 prescribed period or on or before the prescribed date for the filing of
37 such document, or for making the payment, including any extension grant-
38 ed for such filing or payment, and only if such document or payment was
39 deposited in the mail, postage prepaid, properly addressed to the
40 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
41 cer or person with which or with whom the document is required to be
42 filed or to which or to whom such payment is required to be made. If any
43 document is sent by United States registered mail, such registration
44 shall be prima facie evidence that such document was delivered to the
45 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
46 cer or person to which or to whom addressed, and the date of registra-
47 tion shall be deemed the postmark date. The commissioner of finance and,
48 where relevant, the tax appeals tribunal are authorized to provide by
49 regulation the extent to which such provisions with respect to prima
50 facie evidence of delivery and the postmark date shall apply to certi-
51 fied mail. Except as provided in subdivision f of this section, this
52 subdivision shall apply in the case of postmarks not made by the United
53 States postal service only if and to the extent provided by regulation
54 of the commissioner of finance or, where relevant, the tax appeals
55 tribunal.

1 e. When the last day prescribed under authority of this chapter,
2 including any extension of time, for performing any act falls on a
3 Saturday, Sunday or legal holiday in the state, the performance of such
4 act shall be considered timely if it is performed on the next succeeding
5 day which is not a Saturday, Sunday or legal holiday.

6 f. (1) Any reference in subdivision d of this section to the United
7 States mail shall be treated as including a reference to any delivery
8 service designated by the secretary of the treasury of the United States
9 pursuant to section seventy-five hundred two of the internal revenue
10 code and any reference in subdivision d of this section to a United
11 States postmark shall be treated as including a reference to any date
12 recorded or marked in the manner described in section seventy-five
13 hundred two of the internal revenue code by a designated delivery
14 service. If the commissioner of finance finds that any delivery service
15 designated by such secretary is inadequate for the needs of the city,
16 the commissioner of finance may withdraw such designation for purposes
17 of this title. The commissioner of finance may also designate additional
18 delivery services meeting the criteria of section seventy-five hundred
19 two of the internal revenue code for purposes of this title, or may
20 withdraw any such designation if the commissioner of finance finds that
21 a delivery service so designated is inadequate for the needs of the
22 city. Any reference in subdivision d of this section to the United
23 States mail shall be treated as including a reference to any delivery
24 service designated by the commissioner of finance and any reference in
25 subdivision d of this section to a United States postmark shall be
26 treated as including a reference to any date recorded or marked in the
27 manner described in section seventy-five hundred two of the internal
28 revenue code by a delivery service designated by the commissioner of
29 finance, provided, however, any withdrawal of designation or additional
30 designation by the commissioner of finance shall not be effective for
31 purposes of service upon the tax appeals tribunal, unless and until such
32 withdrawal of designation or additional designation is ratified by the
33 president of the tax appeals tribunal.

34 (2) Any equivalent of registered or certified mail designated by the
35 United States secretary of the treasury, or as may be designated by the
36 commissioner of finance pursuant to the same criteria used by such
37 secretary for such designations pursuant to section seventy-five hundred
38 two of the internal revenue code, shall be included within the meaning
39 of registered or certified mail as used in subdivision d of this
40 section. If the commissioner of finance finds that any equivalent of
41 registered or certified mail designated by such secretary or the commis-
42 sioner of finance is inadequate for the needs of the city, the commis-
43 sioner of finance may withdraw such designation for purposes of this
44 title, provided, however, any withdrawal of designation or additional
45 designation by the commissioner of finance shall not be effective for
46 purposes of service upon the tax appeals tribunal, unless and until such
47 withdrawal of designation or additional designation is ratified by the
48 president of the tax appeals tribunal.

49 § 11-1416 Construction and enforcement. This chapter shall be
50 construed and enforced in conformity with subdivision (j) of section
51 twelve hundred one of the tax law.

52 § 11-1417 Disposition of revenues. All revenues resulting from the
53 imposition of the tax under this chapter shall be paid into the treasury
54 of the city and shall be credited to and deposited in the general fund
55 of the city, but no part of such revenue may be expended unless appro-
56 priated in the annual budget of the city.

CHAPTER 16
TAX ON CONTAINERS

§ 11-1601 Definitions. When used in this chapter, the following terms shall mean and include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination thereof.

2. "Container." Any article, thing or contrivance made in whole or in part of rigid or semi-rigid plastic, including, but not limited to, barrels, baskets, bottles, boxes, cartons, carrying cases, crates, cups, cylinders, drums, jars, jugs, pails, pots, trays, tubs, tubes, tumblers, and vessels, intended for use in packing or packaging any product intended for sale:

(a) Metal containers and paperboard or fiber containers which have been impregnated, lined or coated with plastic or other materials shall be considered to be classified as metal containers and paperboard containers, respectively;

(b) Paperboard or fiber containers with fastenings, tops or bottoms made of plastic shall be classified as paperboard or fiber containers;

(c) Plastic caps that are easily, readily, usually, and customarily separated from the container before disposal shall not be considered part of the container.

3. "Recycled material." Component materials which have been derived from previously used material or from new or old scrap material.

4. "Taxable period." Such calendar period prescribed for filing returns by this chapter or by the commissioner of finance.

5. "Retail sale" or "sale at retail." A sale to any person for any purpose other than for resale as such or as a physical component part of tangible personal property.

6. "Sale." The sale or furnishing of a container by a seller or supplier to a retailer.

7. "Seller or supplier." Any person who sells containers to a retailer.

8. "Retailer." Any person who purchases containers, whether filled or unfilled, for the purpose of using them in connection with and as part of sales at retail or who receives them as containers of products intended for sale at retail.

9. "City." The city of Staten Island.

10. "Commissioner of finance." The commissioner of finance of the city.

11. "Comptroller." The comptroller of the city.

§ 11-1602 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying chapter and the purposes thereof;

2. To extend, for cause shown, the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties but not interest computed at the rate of six per cent per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treas-

1 ury department relative to any person, any other provision of this chap-
2 ter to the contrary notwithstanding;

3 4. To delegate the commissioner's functions under this section to an
4 assistant commissioner or deputy commissioner in the department of
5 finance or to any employee or employees of the commissioner of finance;

6 5. To prescribe methods for determining the containers sold or
7 supplied or purchased and to determine which are taxable and nontaxable;

8 6. To require sellers and suppliers and retailers within the city to
9 keep detailed records with respect to containers bought, sold, used,
10 manufactured or produced, and stock and production records with respect
11 to such containers whether or not subject to the tax imposed by this
12 chapter, and to furnish any information with respect thereto upon
13 request to the commissioner of finance;

14 7. To assess, determine, revise and readjust the taxes imposed under
15 this chapter.

16 § 11-1603 Administration of oaths and compelling testimony. a. The
17 commissioner of finance or the commissioner's employees or agents duly
18 designated and authorized by the commissioner shall have power to admin-
19 ister oaths and take affidavits in relation to any matter or proceeding
20 in the exercise of their powers and duties under this chapter. The
21 commissioner of finance shall have power to subpoena and require the
22 attendance of witnesses and the production of books, papers and docu-
23 ments to secure information pertinent to the performance of the commis-
24 sioner's duties hereunder and of the enforcement of this chapter and to
25 examine them in relation thereto, and to issue commissions for the exam-
26 ination of witnesses who are out of the state or unable to attend before
27 the commissioner or excused from attendance.

28 b. A justice of the supreme court either in court or at chambers shall
29 have power summarily to enforce by proper proceedings the attendance and
30 testimony of witnesses and the production and examination of books,
31 papers and documents called for by the subpoena of the commissioner of
32 finance under this chapter.

33 c. Any person who shall refuse to testify or to produce books or
34 records or who shall testify falsely in any material matter pending
35 before the commissioner of finance under this chapter shall be guilty of
36 a misdemeanor, punishment for which shall be a fine of not more than one
37 thousand dollars or imprisonment for not more than one year, or both
38 such fine and imprisonment.

39 d. The officers who serve the summons or subpoena of the commissioner
40 of finance and witnesses attending in response thereto shall be entitled
41 to the same fees as are allowed to officers and witnesses in civil cases
42 in courts of record, except as otherwise provided. Such officers shall
43 be the city sheriff and the city sheriff's duly appointed deputies or
44 any officers or employees of the commissioner of finance, designated to
45 serve such process.

46 § 11-1604 Imposition of tax. 1. On and after July first, nineteen
47 hundred seventy-one, there is hereby imposed within the city and there
48 shall be paid a tax upon every sale of a plastic container at the rate
49 of two cents for each container sold.

50 2. A credit shall be allowed against the taxes imposed by this chap-
51 ter of one cent for each taxable container if manufactured with a mini-
52 mum of thirty percent of recycled material.

53 § 11-1605 Presumptions and burden of proof. For the purpose of
54 proper administration of this chapter and to prevent evasion of the tax
55 hereby imposed, it shall be presumed that all sales of plastic contain-
56 ers are taxable, and not entitled to any credit allowed against the

1 taxes imposed. Such presumptions shall prevail until the contrary is
2 established and the burden of proving the contrary shall be upon the
3 taxpayer.

4 § 11-1606 Payment of the tax. The tax imposed pursuant to this
5 chapter shall be paid by the seller or supplier. However, where the tax
6 has not been paid on a sale by such seller or supplier, the retailer
7 shall be liable for tax thereon upon purchasing the container. Should
8 sellers and suppliers having no business situs in the city, who sell
9 containers to retailers within the city, pay the tax, the retailer
10 purchasing the containers shall not be liable for the tax.

11 § 11-1607 Records to be kept. Every seller or supplier and every
12 retailer shall keep records of all plastic containers taxed pursuant to
13 this chapter and of all purchases and sales thereof and of the taxes due
14 and payable on the sale or on the purchase thereof, in such form as the
15 commissioner of finance may by regulation require. Such records shall
16 be available for inspection and examination at any time upon demand by
17 the commissioner of finance or the commissioner's duly authorized agent
18 or employee and shall be preserved for a period of three years, except
19 that the commissioner of finance may consent to their destruction within
20 that period or may require that they be kept longer.

21 § 11-1608 Exemptions. 1. The following shall be exempt from the
22 payment of the tax imposed by this chapter:

23 (a) The state of New York, or any of its agencies, instrumentalities,
24 public corporations, including a public corporation created pursuant to
25 agreement or compact with another state or Canada, or political subdivi-
26 sions where it is the purchaser, user or consumer;

27 (b) The United States of America, and any of its agencies and instru-
28 mentalities insofar as it is immune from taxation where it is the
29 purchaser, user or consumer;

30 (c) The United Nations or other international organizations of which
31 the United States of America is a member; and

32 (d) Any corporation, or association, or trust, or community chest,
33 fund or foundation, organized and operated exclusively for religious,
34 charitable, or educational purposes, or for the prevention of cruelty to
35 children or animals, and no part of the net earnings of which inures to
36 the benefit of any private shareholder or individual, and no substantial
37 part of the activities of which is carrying on propaganda, or otherwise
38 attempting to influence legislation; provided, however, that nothing in
39 this paragraph shall include an organization operated for the primary
40 purpose of carrying on a trade or business for profit, whether or not
41 all of its profits are payable to one or more organizations described in
42 this paragraph.

43 2. The following containers shall be exempt from the tax imposed by
44 this chapter: a. Containers sold or furnished containing products
45 intended for use in manufacturing processes and not for final retail
46 sale.

47 b. Containers used as receptacles for food, food products, beverages,
48 dietary foods and health supplements, sold for human consumption but not
49 including: (i) candy and confectionery, (ii) fruit drinks which contain
50 less than seventy percent of natural fruit juice, (iii) soft drinks,
51 sodas and beverages such as are ordinarily dispensed at soda fountains
52 or in connection therewith, other than coffee, tea and cocoa, and (iv)
53 beer, wine or other alcoholic beverages.

54 § 11-1609 Returns. 1. Every seller or supplier shall file with the
55 commissioner of finance a return of containers sold and of the taxes due
56 and payable thereon for the period from July first, nineteen hundred

1 seventy-one until the last day of September, nineteen hundred seventy-
2 one and thereafter for each of the four-monthly periods ending on the
3 last day of January, May and September of each year.

4 2. Every retailer shall file with the commissioner of finance a
5 return of containers purchased by such retailer from sellers or suppli-
6 ers having no situs within the city and of the taxes due thereon for the
7 same periods provided in subdivision one of this section.

8 3. The returns shall be filed within twenty days after the end of the
9 periods covered thereby. The commissioner of finance may permit or
10 require returns to be made for other periods and upon such dates as the
11 commissioner may specify. If the commissioner of finance deems it
12 necessary in order to insure the payment of the tax imposed by this
13 chapter, the commissioner may require returns to be made for shorter
14 periods than those prescribed pursuant to the provisions of this subdi-
15 vision and upon such dates as he or she may specify.

16 4. The forms of returns shall be prescribed by the commissioner of
17 finance and shall contain such information as the commissioner may deem
18 necessary for the proper administration of this chapter. The commis-
19 sioner of finance may require amended returns to be filed within twenty
20 days after notice and to contain the information specified in the
21 notice.

22 5. If a return required by this chapter is not filed or if a return
23 when filed is incorrect or insufficient on its face the commissioner of
24 finance shall take the necessary steps to enforce the filing of such a
25 return or a corrected return.

26 § 11-1610 Determination of tax. If a return required by this chapter
27 is not filed, or if a return when filed is incorrect or insufficient,
28 the amount of tax due shall be determined by the commissioner of finance
29 from such information as may be obtainable and, if necessary, the tax
30 may be estimated on the basis of external indices, such as volume of
31 sales, inventories, purchases of containers, or of raw materials,
32 production figures, or other factors. Notice of such determination shall
33 be given to the person liable for the collection or payment of the tax.
34 Such determination shall finally and irrevocably fix the tax unless the
35 person against whom it is assessed, within thirty days after giving
36 notice of such determination, shall apply to the commissioner of finance
37 for a hearing, or unless the commissioner of finance of his or her own
38 motion shall redetermine the same. After such hearing the commissioner
39 of finance shall give notice of his or her determination to the person
40 against whom the tax is assessed. The determination of the commissioner
41 of finance shall be reviewable for error, illegality or unconstitution-
42 ality or any other reason whatsoever by a proceeding under article
43 seventy-eight of the civil practice law and rules if application there-
44 for is made to the supreme court within four months after the giving of
45 the notice of such determination. A proceeding under article seventy-
46 eight of the civil practice law and rules shall not be instituted
47 unless: (a) the amount of any tax sought to be reviewed, with penalties
48 and interest thereon, if any, shall be first deposited with the commis-
49 sioner of finance and there shall be filed with the commissioner of
50 finance an undertaking, issued by a surety company authorized to trans-
51 act business in this state and approved by the superintendent of insur-
52 ance of this state as to solvency and responsibility, in such amount as
53 a justice of the supreme court shall approve to the effect that if such
54 proceeding be dismissed or the tax confirmed, the petitioner will pay
55 all costs and charges which may accrue in the prosecution of the
56 proceeding; or (b) at the option of the applicant such undertaking filed

1 with the commissioner of finance may be in a sum sufficient to cover the
2 taxes, penalties and interest thereon stated in such determination plus
3 the costs and charges which may accrue against it in the prosecution of
4 the proceeding, in which event the applicant shall not be required to
5 deposit such taxes, penalties and interest as a condition precedent to
6 the application.

7 § 11-1611 Refunds. a. In the manner provided in this section the
8 commissioner of finance shall refund or credit, without interest, any
9 tax, penalty or interest erroneously, illegally or unconstitutionally
10 collected or paid if application to the commissioner of finance for such
11 refund shall be made within one year from the payment thereof. Whenever
12 a refund is made by the commissioner of finance, the commissioner shall
13 state his or her reasons therefor in writing. Such application may be
14 made by the seller or supplier or the retailer or other person who has
15 actually paid the tax. The commissioner of finance may, in lieu of any
16 refund required to be made, allow credit therefor on payments due from
17 the applicant.

18 b. An application for a refund or credit made as herein provided shall
19 be deemed an application for revision of any tax, penalty or interest
20 complained of. If the commissioner of finance, prior to any hearing
21 held, initially denies the application for refund, the commissioner
22 shall give notice of such determination of denial to the applicant. Such
23 determination shall be final and irrevocable unless the applicant, with-
24 in thirty days after the giving of notice of such determination, shall
25 apply to the commissioner of finance for a hearing, or unless the
26 commissioner of finance of his or her own motion shall redetermine the
27 same. After such hearing the commissioner of finance shall give notice
28 of his or her determination to the applicant, who shall be entitled to
29 review such determination by a proceeding pursuant to article seventy-
30 eight of the civil practice law and rules, provided such proceeding is
31 instituted within four months after the giving of the notice of such
32 determination, and provided that a final determination of tax was not
33 previously made. Such a proceeding shall not be instituted unless an
34 undertaking is filed with the commissioner of finance in such amount and
35 with such sureties as a justice of the supreme court shall approve to
36 the effect that if such proceeding be dismissed or the tax confirmed,
37 the petitioner shall pay all costs and charges which may accrue in the
38 prosecution of such proceeding.

39 c. A person shall not be entitled to a revision, refund or credit
40 under this section of a tax, interest or penalty which had been deter-
41 mined to be due pursuant to the provisions of section 11-1610 of this
42 chapter where such person has had a hearing or an opportunity for a
43 hearing, as provided in said section, or has failed to avail himself or
44 herself of the remedies therein provided. No refund or credit shall be
45 made of a tax, interest or penalty paid after a determination by the
46 commissioner of finance made pursuant to section 11-1609 of this chapter
47 unless it be found that such determination was erroneous, illegal or
48 unconstitutional or otherwise improper, by the commissioner of finance
49 after a hearing or of the commissioner's own motion, or in a proceeding
50 under article seventy-eight of the civil practice law and rules, pursu-
51 ant to the provisions of said section, in which event refund or credit
52 without interest shall be made of the tax, interest or penalty found to
53 have been overpaid.

54 § 11-1612 Reserves. In cases where the seller or supplier or the
55 retailer has applied for a refund and has instituted a proceeding under
56 article seventy-eight of the civil practice law and rules to review a

1 determination adverse to him or her on his or her application for
2 refund, the comptroller shall set up appropriate reserves to meet any
3 decision adverse to the city.

4 § 11-1613 Remedies exclusive. The remedies provided by sections
5 11-1610 and 11-1611 of this chapter shall be the exclusive remedies
6 available to any person for the review of tax liability imposed by this
7 chapter; and no determination or proposed determination of tax or deter-
8 mination on any application for refund shall be enjoined or reviewed by
9 an action for declaratory judgment, an action for money had and received
10 or by any action or proceeding other than a proceeding in the nature of
11 a certiorari proceeding under article seventy-eight of the civil prac-
12 tice law and rules; provided, however, that a taxpayer may proceed by
13 declaratory judgment if such taxpayer institutes suit within thirty days
14 after a deficiency assessment is made and pays the amount of the defi-
15 ciency assessment to the commissioner of finance prior to the institu-
16 tion of such suit and posts a bond for costs as provided in section
17 11-1610 of this chapter.

18 § 11-1614 Proceedings to recover tax. a. Whenever any seller or
19 supplier or retailer or other person shall fail to pay any tax, penalty
20 or interest imposed by this chapter, the corporation counsel shall, upon
21 the request of the commissioner of finance bring or cause to be brought
22 an action to enforce the payment of the same on behalf of the city of
23 Staten Island in any court of the state of New York or of any other
24 state or of the United States. If, however, the commissioner of finance
25 in his or her discretion believes that any such seller or supplier or
26 retailer or other person is about to cease business, leave the state or
27 remove or dissipate the assets out of which the tax, penalties or inter-
28 est might be satisfied, and that any such tax, penalty or interest will
29 not be paid when due, the commissioner of finance may declare such tax,
30 penalty or interest to be immediately due and payable and may issue a
31 warrant immediately.

32 b. As an additional or alternate remedy, the commissioner of finance
33 may issue a warrant, directed to the city sheriff commanding the city
34 sheriff to levy upon and sell the real and personal property of the
35 seller or supplier or retailer or other person liable for the tax, which
36 may be found within the city, for the payment of the amount thereof,
37 with any penalties and interest, and the cost of executing the warrant,
38 and to return such warrant to the commissioner of finance and to pay to
39 the commissioner of finance the money collected by virtue thereof within
40 sixty days after the receipt of such warrant. The city sheriff shall
41 within five days after the receipt of the warrant file with the county
42 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
43 ment docket the name of the person mentioned in the warrant and the
44 amount of the tax, penalties and interest for which the warrant is
45 issued and the date when such copy is filed. Thereupon the amount of
46 such warrant so docketed shall become a lien upon the title to and
47 interest in real and personal property of the person against whom the
48 warrant is issued. The city sheriff shall then proceed upon the warrant,
49 in the same manner, and with like effect, as that provided by law in
50 respect to executions issued against property upon judgments of a court
51 of record, and for services in executing the warrant the city sheriff
52 shall be entitled to the same fees, which he or she may collect in the
53 same manner. In the discretion of the commissioner of finance a warrant
54 of like terms, force and effect may be issued and directed to any offi-
55 cer or employee of the department of finance, and in the execution ther-
56 eof such officer or employee shall have all the powers conferred by law

1 upon sheriffs, but shall be entitled to no fee or compensation in excess
2 of the actual expenses paid in the performance of such duty. If a
3 warrant is returned not satisfied in full, the commissioner of finance
4 may from time to time issue new warrants and shall also have the same
5 remedies to enforce the amount due thereunder as if the city had recover-
6 ed judgment therefor and execution thereon had been returned unsatis-
7 fied.

8 c. Whenever a seller or supplier or the retailer shall make a sale,
9 transfer, or assignment in bulk of any part of the whole of his or her
10 fixtures, or of his or her stock of merchandise, or of stock or merchan-
11 dise and of fixtures pertaining to the conduct or operation of business
12 of the seller or supplier or the retailer, otherwise than in the ordi-
13 nary course of trade and regular prosecution of business, the purchaser,
14 transferee or assignee shall at least ten days before taking possession
15 of the subject of said sale, transfer or assignment, or paying therefor,
16 notify the commissioner of finance by registered mail of the proposed
17 sale and of the price, terms and conditions thereof whether or not the
18 seller, transferor or assignor, has represented to, or informed the
19 purchaser, transferee or assignee that it owes any tax pursuant to this
20 chapter, and whether or not the purchaser, transferee or assignee has
21 knowledge that such taxes are owing, and whether any such taxes are in
22 fact owing.

23 Whenever the purchaser, transferee or assignee shall fail to give
24 notice to the commissioner of finance as required by the opening para-
25 graph of this subdivision, or whenever the commissioner of finance shall
26 inform the purchaser, transferee or assignee that a possible claim for
27 such tax or taxes exists, any sums of money, property or chooses in
28 action, or other consideration, which the purchaser, transferee or
29 assignee is required to transfer over to the seller, transferor or
30 assignor shall be subject to a first priority right and lien for any
31 such taxes theretofore or thereafter determined to be due from the sell-
32 er, transferor or assignor to the city, and the purchaser, transferee or
33 assignee is forbidden to transfer to the seller, transferor or assignor
34 any such sums of money, property or chooses in action to the extent of
35 the amount of the city's claim. For failure to comply with the
36 provisions of this subdivision, the purchaser, transferee or assignee,
37 in addition to being subject to the liabilities and remedies imposed
38 under the provisions of article six of the uniform commercial code,
39 shall be personally liable for the payment to the city of any such taxes
40 theretofore or thereafter determined to be due to the city from the
41 seller, transferor or assignor, and such liability may be assessed and
42 enforced in the same manner as the liability for tax under this chapter.

43 d. The commissioner of finance, if he or she finds that the interests
44 of the city will not thereby be jeopardized, and upon such conditions as
45 the commissioner of finance may require, may release any property from
46 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
47 tions to tax, penalties and interest filed pursuant to subdivision b of
48 this section, and such release or vacating of the warrant may be
49 recorded in the office of any recording officer in which such warrant
50 has been filed. The clerk shall thereupon cancel and discharge as of the
51 original date of docketing the vacated warrant.

52 § 11-1615 Penalties and interest. a. Any person failing to file a
53 return or to pay any tax to the commissioner of finance within the time
54 required by this chapter shall be subject to a penalty of five percent
55 of the amount of tax due; plus interest at the rate of one percent of
56 such tax for each month of delay excepting the first month after such

1 return was required to be filed or such tax became due; but the commis-
2 sioner of finance if satisfied that the delay was excusable, may remit
3 all or any part of such penalty, but not interest at the rate of six
4 percent per year. Such penalties and interest shall be paid and disposed
5 of in the same manner as other revenues from this chapter. Unpaid penal-
6 ties and interest may be enforced in the same manner as the tax imposed
7 by this chapter.

8 b. Any seller or supplier or any retailer or any officer of a corpo-
9 rate seller or supplier or retailer, failing to file a return as
10 required by this chapter, or filing or causing to be filed or making or
11 causing to be made or given or causing to be given any return, certifi-
12 cate, affidavit, representation, information, testimony or statement
13 required or authorized by this chapter which is willfully false, and any
14 seller or supplier or any retailer or any officer of a corporate seller
15 or supplier or retailer failing to keep the records required by subdivi-
16 sion six of section 11-1602 of this chapter, shall, in addition to the
17 penalties under this subdivision or elsewhere prescribed, be guilty of a
18 misdemeanor, punishment for which shall be a fine of not more than one
19 thousand dollars or imprisonment for not more than one year, or both
20 such fine and imprisonment. It shall not be any defense to a prosecution
21 under this subdivision that the failure to file a return or that the
22 actions or failures to act mentioned in this subdivision was uninten-
23 tional or not willful.

24 c. The certificate of the commissioner of finance to the effect that a
25 tax has not been paid, that a return has not been filed, or that infor-
26 mation has not been supplied pursuant to the provisions of this chapter,
27 shall be presumptive evidence thereof.

28 § 11-1616 Return to be secret. a. Except in accordance with proper
29 judicial order, or as otherwise provided by law, it shall be unlawful
30 for the commissioner of finance, any officer or employee of the depart-
31 ment of finance, any person engaged or retained on an independent
32 contract basis or any person who, pursuant to this section is permitted
33 to inspect any return or to whom a copy, an abstract or a portion of any
34 return is furnished, or to whom any information contained in any return
35 is furnished, to divulge or make known in any manner any information
36 contained in or relating to any return required under this chapter. The
37 officers charged with the custody of such returns shall not be required
38 to produce any of them or evidence of anything contained in them in any
39 action or proceeding in any court, except on behalf of the commissioner
40 of finance in an action or proceeding under the provisions of this chap-
41 ter, or on behalf of any party to any action or proceeding under the
42 provisions of this chapter, when the returns or facts shown thereby are
43 directly involved in such action or proceeding, in either of which
44 events the court may require the production of, and may admit in
45 evidence, so much of said returns or of the facts shown thereby, as are
46 pertinent to the action or proceeding and no more. Nothing under this
47 subdivision shall be construed to prohibit the delivery to a taxpayer or
48 such taxpayer's duly authorized representative of a certified copy of
49 any return filed in connection with such taxpayer's tax; nor to prohibit
50 the delivery of such a certified copy of such return or of any informa-
51 tion contained in or relating thereto, the United States of America or
52 any department thereof, to the state of New York or any department ther-
53 eof, or to any agency or department of the city of Staten Island,
54 provided the same is requested for official business; nor to prohibit
55 the inspection for official business of such returns by the corporation
56 counsel or other legal representatives of the city or by the district

1 attorney of Richmond county; nor to prohibit the publication of statis-
2 tics so classified as to prevent the identification of particular
3 returns and the items thereof. Returns shall be preserved for three
4 years and thereafter until the commissioner of finance permits them to
5 be destroyed.

6 b. Any violation of subdivision a of this section shall be punishable
7 by a fine not exceeding one thousand dollars, or by imprisonment not
8 exceeding one year, or both, in the discretion of the court, and if the
9 offender be an officer or employee of the city he or she shall be
10 dismissed from office and be incapable of holding any public office for
11 a period of five years thereafter.

12 § 11-1617 Notices and limitations of time. a. Any notice author-
13 ized or required under the provisions of this chapter may be given by
14 mailing the same to the person for whom it is intended in a postpaid
15 envelope addressed to such person at the address given in the last
16 return filed by such person pursuant to the provisions of this chapter
17 or in any application made by such person or, if no return has been
18 filed or application made, then to such address as may be obtainable.
19 The mailing of such notice shall be presumptive evidence of the receipt
20 of the same by the person to whom addressed. Any period of time which
21 is determined according to the provisions of this chapter by the giving
22 of notice shall commence to run from the date of mailing of such notice.

23 b. The provisions of the civil practice law and rules or any other
24 law relative to limitations of time for the enforcement of a civil reme-
25 dy shall not apply to any proceeding or action taken by the city to
26 levy, appraise, assess, determine or enforce the collection of any tax
27 or penalty provided by this chapter. However, except in the case of a
28 willfully false or fraudulent return with intent to evade the tax, no
29 assessment of additional tax shall be made after the expiration of more
30 than three years from the date of the filing of a return; provided,
31 however, that where no return has been filed as provided by law the tax
32 may be assessed at any time.

33 c. Where, before the expiration of the period prescribed under this
34 section for assessment of an additional tax, a taxpayer has consented in
35 writing that such period be extended, the amount of such additional tax
36 due may be determined at any time within such extended period. The
37 period so extended may be further extended by subsequent consents in
38 writing made before the expiration of the extended period.

39 § 11-1618 Construction and enforcement. This chapter shall be
40 construed and enforced in conformity with chapter three hundred ninety-
41 nine of the laws of nineteen hundred seventy-one, pursuant to which it
42 is enacted.

43 CHAPTER 17

44 CITY PERSONAL INCOME TAX ON RESIDENTS

45 SUBCHAPTER 1

46 GENERAL

47 § 11-1701 Imposition of tax. General. A tax is hereby imposed on the
48 city taxable income of every city resident individual, estate and trust
49 determined in accordance with the rates set forth in subdivision (a) of
50 this section for taxable years beginning before two thousand twenty-sev-
51 en, and in accordance with the rates set forth in subdivision (b) of
52 this section for taxable years beginning after two thousand twenty-six.
53 Provided, however, that if, for any taxable year beginning after two

1 thousand twenty-six, the rates set forth in such subdivision (b) are
 2 rendered inapplicable and the rates set forth in such subdivision (a)
 3 are rendered applicable, then the tax for such taxable year shall be at
 4 the rates provided under subparagraph (A) of paragraphs one, two and
 5 three of such subdivision (a).

6 Notwithstanding the opening paragraph of this section, for taxable
 7 years beginning after two thousand two and before two thousand six, a
 8 tax is hereby imposed on the city taxable income of every city resident
 9 individual, estate and trust determined in accordance with the rates set
 10 forth in subdivision (g) of this section and in accordance with the
 11 provisions of subdivision (h) of this section. During any taxable year
 12 beginning after two thousand two and before two thousand six, in which
 13 the tax imposed pursuant to this section is determined in accordance
 14 with subdivisions (g) and (h) of this section, the rates set forth in
 15 subdivisions (a) and (b) of this section shall be inapplicable, and the
 16 tax imposed pursuant to section 11-1704.1 of this chapter shall be
 17 suspended.

18 (a) Rate of tax. A tax imposed pursuant to this section shall be
 19 determined as follows:

20 (1) Resident married individuals filing joint returns and resident
 21 surviving spouses. The tax under this section for each taxable year on
 22 the city taxable income of every city resident married individual who
 23 makes a single return jointly with his or her spouse under subdivision
 24 (b) of section 11-1751 of this chapter and on the city taxable income of
 25 every city resident surviving spouse shall be determined in accordance
 26 with the following tables:

27 (A) For taxable years beginning after two thousand sixteen:

28	If the city taxable income is:	The tax is:
29	Not over \$21,600	2.7% of the city taxable income
30	Over \$21,600 but not	\$583 plus 3.3% of excess
31	over \$45,000	over \$21,600
32	Over \$45,000 but not	\$1,355 plus 3.35% of excess
33	over \$90,000	over \$45,000
34	Over \$90,000	\$2,863 plus 3.4% of excess
35		over \$90,000

36 (B) For taxable years beginning after two thousand fourteen and before
 37 two thousand seventeen:

38	If the city taxable income is:	The tax is:
39	Not over \$21,600	2.55% of the city taxable income
40	Over \$21,600 but not	\$551 plus 3.1% of excess
41	over \$45,000	over \$21,600
42	Over \$45,000 but not	\$1,276 plus 3.15% of excess
43	over \$90,000	over \$45,000
44	Over \$90,000 but not	\$2,694 plus 3.2% of excess
45	over \$500,000	over \$90,000
46	Over \$500,000	\$16,803 plus 3.4% of excess
47		over \$500,000

48 (C) For taxable years beginning after two thousand nine and before two
 49 thousand fifteen:

50 If the city taxable income is: The tax is:

1	Not over \$21,600	2.55% of the city taxable income
2	Over \$21,600 but not	\$551 plus 3.1% of excess
3	over \$45,000	over \$21,600
4	Over \$45,000 but not	\$1,276 plus 3.15% of excess
5	over \$90,000	over \$45,000
6	Over \$90,000 but not	\$2,694 plus 3.2% of excess
7	over \$500,000	over \$90,000
8	Over \$500,000	\$15,814 plus 3.4% of excess
9		over \$500,000

10 (2) Resident heads of households. The tax under this section for each
 11 taxable year on the city taxable income of every city resident head of a
 12 household shall be determined in accordance with the following tables:

13 (A) For taxable years beginning after two thousand sixteen:

14	If the city taxable income is:	The tax is:
15	Not over \$14,400	2.7% of the city taxable income
16	Over \$14,400 but not	\$389 plus 3.3% of excess
17	over \$30,000	over \$14,400
18	Over \$30,000 but not	\$904 plus 3.35% of excess
19	over \$60,000	over \$30,000
20	Over \$60,000	\$1,909 plus 3.4% of excess
21		over \$60,000

22 (B) For taxable years beginning after two thousand fourteen and before
 23 two thousand seventeen:

24	If the city taxable income is:	The tax is:
25	Not over \$14,400	2.55% of the city taxable income
26	Over \$14,400 but not	\$367 plus 3.1% of excess
27	over \$30,000	over \$14,400
28	Over \$30,000 but not	\$851 plus 3.15% of excess
29	over \$60,000	over \$30,000
30	Over \$60,000 but not	\$1,796 plus 3.2% of excess
31	over \$500,000	over \$60,000
32	Over \$500,000	\$16,869 plus 3.4% of excess
33		over \$500,000

34 (C) For taxable years beginning after two thousand nine and before two
 35 thousand fifteen:

36	If the city taxable income is:	The tax is:
37	Not over \$14,400	2.55% of the city taxable income
38	Over \$14,400 but not	\$367 plus 3.1% of excess
39	over \$30,000	over \$14,400
40	Over \$30,000 but not	\$851 plus 3.15% of excess
41	over \$60,000	over \$30,000
42	Over \$60,000 but not	\$1,796 plus 3.2% of excess
43	over \$500,000	over \$60,000
44	Over \$500,000	\$15,876 plus 3.4% of excess
45		over \$500,000

46 (3) Resident unmarried individuals, resident married individuals
 47 filing separate returns and resident estates and trusts. The tax under
 48 this section for each taxable year on the city taxable income of every
 49 city resident individual who is not a married individual who makes a

1 single return jointly with his or her spouse under subdivision (b) of
 2 section 11-1751 of this chapter or a city resident head of a household
 3 or a city resident surviving spouse, and on the city taxable income of
 4 every city resident estate and trust shall be determined in accordance
 5 with the following tables:

6 (A) For taxable years beginning after two thousand sixteen:

7	If the city taxable income is:	The tax is:
8	Not over \$12,000	2.7% of the city taxable income
9	Over \$12,000 but not	\$324 plus 3.3% of excess
10	over \$25,000	over \$12,000
11	Over \$25,000 but not	\$753 plus 3.35% of excess
12	over \$50,000	over \$25,000
13	Over \$50,000	\$1,591 plus 3.4% of excess
14		over \$50,000

15 (B) For taxable years beginning after two thousand fourteen and before
 16 two thousand seventeen:

17	If the city taxable income is:	The tax is:
18	Not over \$12,000	2.55% of the city taxable income
19	Over \$12,000 but not	\$306 plus 3.1% of excess
20	over \$25,000	over \$12,000
21	Over \$25,000 but not	\$709 plus 3.15% of excess
22	over \$50,000	over \$25,000
23	Over \$50,000 but not	\$1,497 plus 3.2% of excess
24	over \$500,000	over \$50,000
25	Over \$500,000	\$16,891 plus 3.4% of excess
26		over \$500,000

27 (C) For taxable years beginning after two thousand nine and before two
 28 thousand fifteen:

29	If the city taxable income is:	The tax is:
30	Not over \$12,000	2.55% of the city taxable income
31	Over \$12,000 but not	\$306 plus 3.1% of excess
32	over \$25,000	over \$12,000
33	Over \$25,000 but not	\$709 plus 3.15% of excess
34	over \$50,000	over \$25,000
35	Over \$50,000 but not	\$1,497 plus 3.2% of excess
36	over \$500,000	over \$50,000
37	Over \$500,000	\$15,897 plus 3.4% of excess
38		over \$500,000

39 (b) Rate of tax. A tax imposed pursuant to this section shall be
 40 determined as follows:

41 (1) Resident married individuals filing joint returns and resident
 42 surviving spouses. The tax under this section for each taxable year on
 43 the city taxable income of every city resident married individual who
 44 makes a single return jointly with his or her spouse under subdivision
 45 (b) of section 11-1751 of this chapter and on the city taxable income of
 46 every city resident surviving spouse shall be determined in accordance
 47 with the following table:

48 For taxable years beginning after two thousand twenty-six:

1	If the city taxable income is:	The tax is:
2	Not over \$21,600	1.18% of the city taxable income
3	Over \$21,600 but not	\$255 plus 1.435% of excess
4	over \$45,000	over \$21,600
5	Over \$45,000 but not	\$591 plus 1.455% of excess
6	over \$90,000	over \$45,000
7	Over \$90,000	\$1,245 plus 1.48% of excess
8		over \$90,000

9 (2) Resident heads of households. The tax under this section for each
 10 taxable year on the city taxable income of every city resident head of a
 11 household shall be determined in accordance with the following table:
 12 For taxable years beginning after two thousand twenty-six:

13	If the city taxable income is:	The tax is:
14	Not over \$14,400	1.18% of the city taxable income
15	Over \$14,400 but not	\$170 plus 1.435% of excess
16	over \$30,000	over \$14,400
17	Over \$30,000 but not	\$394 plus 1.455% of excess
18	over \$60,000	over \$30,000
19	Over \$60,000	\$830 plus 1.48% of excess
20		over \$60,000

21 (3) Resident unmarried individuals, resident married individuals
 22 filing separate returns and resident estates and trusts. The tax under
 23 this section for each taxable year on the city taxable income of every
 24 city resident individual who is not a married individual who makes a
 25 single return jointly with his or her spouse under subdivision (b) of
 26 section 11-1751 of this chapter or a city resident head of a household
 27 or a city resident surviving spouse, and on the city taxable income of
 28 every city resident estate and trust shall be determined in accordance
 29 with the following table:
 30 For taxable years beginning after two thousand twenty-six:

31	If the city taxable income is:	The tax is:
32	Not over \$12,000	1.18% of the city taxable income
33	Over \$12,000 but not	\$142 plus 1.435% of excess
34	over \$25,000	over \$12,000
35	Over \$25,000 but not	\$328 plus 1.455% of excess
36	over \$50,000	over \$25,000
37	Over \$50,000	\$692 plus 1.48% of excess
38		over \$50,000

39 (c) Partners and partnerships. A partnership as such shall not be
 40 subject to tax under this chapter. Persons carrying on business as part-
 41 ners shall be liable for tax under this chapter only in their separate
 42 or individual capacities. As used in this chapter, the term "partner-
 43 ship" shall include, unless a different meaning is clearly required, a
 44 subchapter K limited liability company. The term "subchapter K limited
 45 liability company" shall mean a limited liability company classified as
 46 a partnership for federal income tax purposes. The term "limited liabil-
 47 ity company" means a domestic limited liability company or a foreign
 48 limited liability company, as defined in section one hundred two of the
 49 limited liability company law, a limited liability investment company
 50 formed pursuant to section five hundred seven of the banking law, or a
 51 limited liability company formed pursuant to section one hundred two-a
 52 of the banking law.

1 (d) Associations taxable as corporations. An association, trust or
 2 other unincorporated organization which is taxable as a corporation for
 3 federal income tax purposes shall not be subject to tax under this chap-
 4 ter.

5 (e) Exempt trusts and organizations. A trust or other unincorporated
 6 organization which by reason of its purposes or activities is exempt
 7 from federal income tax shall be exempt from tax under this chapter,
 8 regardless of whether subject to federal and state income tax on unre-
 9 lated business taxable income.

10 (f) Cross references. For definitions of city taxable income of:

11 (1) City resident individual, see section 11-1711 of this chapter.

12 (2) City resident estate or trust, see section 11-1718 of this chap-
 13 ter.

14 (g) Rate of tax. For taxable years beginning after two thousand two
 15 and before two thousand six, the tax imposed pursuant to this section
 16 shall be determined as follows:

17 (1) Resident married individuals filing joint returns and resident
 18 surviving spouses. The tax under this section for each taxable year on
 19 the city taxable income of every city resident married individual who
 20 makes a single return jointly with his or her spouse under subdivision
 21 (b) of section 11-1751 of this chapter and on the city taxable income of
 22 every city resident surviving spouse shall be determined in accordance
 23 with the following tables:

24 (A) For taxable years beginning in two thousand five:

25 If the city taxable income is:	The tax is:
26 Not over \$21,600	2.907% of the city taxable income
27 Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
28	\$21,600
29 Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
30	\$45,000
31 Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
32	\$90,000
33 Over \$150,000 but not over \$500,000	\$5,260 plus 4.05% of excess over
34	\$150,000
35 Over \$500,000	\$19,435 plus 4.45% of excess over
36	\$500,000

37 (B) For taxable years beginning in two thousand four:

38 If the city taxable income is:	The tax is:
39 Not over \$21,600	2.907% of the city taxable income
40 Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
41	\$21,600
42 Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
43	\$45,000
44 Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
45	\$90,000
46 Over \$150,000 but not over \$500,000	\$5,260 plus 4.175% of excess over
47	\$150,000
48 Over \$500,000	\$19,872 plus 4.45% of excess over
49	\$500,000

50 (C) For taxable years beginning in two thousand three:

1	If the city taxable income is:	The tax is:
2	Not over \$21,600	2.907% of the city taxable income
3	Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
4		\$21,600
5	Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
6		\$45,000
7	Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
8		\$90,000
9	Over \$150,000 but not over \$500,000	\$5,260 plus 4.25% of excess over
10		\$150,000
11	Over \$500,000	\$20,135 plus 4.45% of excess over
12		\$500,000

13 (2) Resident heads of households. The tax under this section for each
 14 taxable year on the city taxable income of every city resident head of a
 15 household shall be determined in accordance with the following tables:

16 (A) For taxable years beginning in two thousand five:

17	If the city taxable income is:	The tax is:
18	Not over \$14,400	2.907% of the city taxable income
19	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
20		\$14,400
21	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
22		\$30,000
23	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over
24		\$60,000
25	Over \$125,000 but not over \$500,000	\$4,418 plus 4.05% of excess over
26		\$125,000
27	Over \$500,000	\$19,606 plus 4.45% of excess over
28		\$500,000

29 (B) For taxable years beginning in two thousand four:

30	If the city taxable income is:	The tax is:
31	Not over \$14,400	2.907% of the city taxable income
32	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
33		\$14,400
34	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
35		\$30,000
36	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over
37		\$60,000
38	Over \$125,000 but not over \$500,000	\$4,418 plus 4.175% of excess over
39		\$125,000
40	Over \$500,000	\$20,075 plus 4.45% of excess over
41		\$500,000

42 (C) For taxable years beginning in two thousand three:

43	If the city taxable income is:	The tax is:
44	Not over \$14,400	2.907% of the city taxable income
45	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
46		\$14,400
47	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
48		\$30,000
49	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over

1		\$60,000
2	Over \$125,000 but not over \$500,000	\$4,418 plus 4.25% of excess over
3		\$125,000
4	Over \$500,000	\$20,356 plus 4.45% of excess over
5		\$500,000

6 (3) Resident unmarried individuals, resident married individuals
7 filing separate returns and resident estates and trusts. The tax under
8 this section for each taxable year on the city taxable income of every
9 city resident individual who is not a married individual who makes a
10 single return jointly with his or her spouse under subdivision (b) of
11 section 11-1751 of this chapter or a city resident head of household or
12 a city resident surviving spouse, and on the city taxable income of
13 every city resident estate and trust shall be determined in accordance
14 with the following tables:

15 (A) For taxable years beginning in two thousand five:

16	If the city taxable income is:	The tax is:
17	Not over \$12,000	2.907% of the city taxable income
18	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
19		\$12,000
20	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
21		\$25,000
22	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over
23		\$50,000
24	Over \$100,000 but not over \$500,000	\$3,530 plus 4.05% of excess over
25		\$100,000
26	Over \$500,000	\$19,730 plus 4.45% of excess over
27		\$500,000

28 (B) For taxable years beginning in two thousand four:

29	If the city taxable income is:	The tax is:
30	Not over \$12,000	2.907% of the city taxable income
31	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
32		\$12,000
33	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
34		\$25,000
35	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over
36		\$50,000
37	Over \$100,000 but not over \$500,000	\$3,530 plus 4.175% of excess over
38		\$100,000
39	Over \$500,000	\$20,230 plus 4.45% of excess over
40		\$500,000

41 (C) For taxable years beginning in two thousand three:

42	If the city taxable income is:	The tax is:
43	Not over \$12,000	2.907% of the city taxable income
44	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
45		\$12,000
46	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
47		\$25,000
48	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over

1		\$50,000
2	Over \$100,000 but not over \$500,000	\$3,530 plus 4.25% of excess over
3		\$100,000
4	Over \$500,000	\$20,530 plus 4.45% of excess over
5		\$500,000

6 (h) Tax table benefit recapture. For taxable years beginning after two
7 thousand two and before two thousand six, there is hereby imposed a
8 supplemental tax, in addition to the tax imposed under the opening para-
9 graph of this section, for the purpose of recapturing the benefit of the
10 tax tables contained in subdivision (g) of this section. The supple-
11 mental tax shall be an amount equal to the sum of the tax table benefits
12 in paragraphs one and two of this subdivision multiplied by their
13 respective fractions in such paragraphs provided, however, that para-
14 graph one of this subdivision shall not apply to taxpayers who are not
15 subject to the second highest rate of tax.

16 (1) Resident married individuals filing joint returns, surviving
17 spouses, resident heads of households, resident unmarried individuals,
18 resident married individuals filing separate returns and resident
19 estates and trusts. (A) The tax table benefit is the difference between
20 (i) the amount of taxable income set forth in the tax table in subdivi-
21 sion (g) of this section not subject to the second highest rate of tax
22 for the taxable year multiplied by such rate and (ii) the second highest
23 dollar denominated tax for such amount of taxable income set forth in
24 the tax table applicable to the taxable year in subdivision (g) of this
25 section.

26 (B) The fraction is computed as follows: the numerator is the lesser
27 of fifty thousand dollars or the excess of New York adjusted gross
28 income for the taxable year over one hundred fifty thousand dollars and
29 the denominator is fifty thousand dollars.

30 (C) This paragraph shall only apply to taxable years beginning after
31 two thousand two and before two thousand six.

32 (2) Resident married individuals filing joint returns, surviving
33 spouses, resident heads of households, resident unmarried individuals,
34 resident married individuals filing separate returns and resident
35 estates and trusts. (A) The tax table benefit is the difference between
36 (i) the amount of taxable income set forth in the tax table in subdivi-
37 sion (g) of this section not subject to the highest rate of tax for the
38 taxable year multiplied by such rate and (ii) the highest dollar denomi-
39 nated tax for such amount of taxable income set forth in the tax table
40 applicable to the taxable year in subdivision (g) of this section less
41 the sum of the tax table benefits in paragraph one of this subdivision.

42 (B) For such taxpayers with adjusted gross income over five hundred
43 thousand dollars, the fraction is one. Provided, however, that the total
44 tax prior to the application of any tax credits shall not exceed the
45 highest rate of tax set forth in the tax table in subdivision (g) of
46 this section multiplied by the taxpayer's taxable income.

47 (C) This paragraph shall only apply to taxable years beginning after
48 two thousand two and before two thousand six.

49 § 11-1703 Separate tax on the ordinary income portion of lump sum
50 distributions. (a) Imposition of separate tax. In addition to any other
51 tax imposed by this chapter, there is hereby imposed for each taxable
52 year a separate tax on the ordinary income portion of a lump sum
53 distribution of every city resident individual, estate and trust which
54 has made an election of lump sum treatment under subsection (e) of
55 section four hundred two of the internal revenue code. The recipient of

1 a lump sum distribution shall be liable for the tax imposed by this
 2 section. The credits against tax under this chapter, except for the
 3 credit under section 11-1773, shall not be allowed against the tax
 4 imposed by this section.

5 (b) Cross reference. For computation of tax, see section 11-1724 of
 6 this chapter.

7 § 11-1704 Tax surcharge. (a) In addition to the taxes imposed by
 8 sections 11-1701 and 11-1703 of this subchapter, there is hereby imposed
 9 for each taxable year beginning after nineteen hundred eighty-nine but
 10 before nineteen hundred ninety-nine, a tax surcharge on the city taxable
 11 income of every city resident individual, estate and trust.

12 (b) The tax surcharge imposed pursuant to this section shall be deter-
 13 mined as follows:

14 (1) Resident married individuals filing joint returns and resident
 15 surviving spouses. The tax surcharge under this section on the city
 16 taxable income of every city resident married individual who makes a
 17 single return jointly with his or her spouse under subdivision (b) of
 18 section 11-1751 of this chapter and on the city taxable income of every
 19 city resident surviving spouse shall be determined in accordance with
 20 the following tables:

21 (A) For taxable years beginning after nineteen hundred eighty-nine and
 22 before nineteen hundred ninety-five:

23 If the city taxable income is:	The tax surcharge is:
24 Not over \$15,500	0
25 Over \$15,500 but not over \$27,000	0.51% of city taxable income in 26 excess of \$15,500
27 Over \$27,000 but not over \$45,000	\$59 plus 0.55% of excess over 28 \$27,000
29 Over \$45,000 but not over \$108,000	\$158 plus 0.51% of excess over 30 \$45,000
31 Over \$108,000	\$479 plus 0.51% of excess over 32 \$108,000

33 (B) For taxable years beginning after nineteen hundred ninety-four but
 34 before nineteen hundred ninety-nine:

35 If the city taxable income is:	The tax surcharge is:
36 Not over \$14,400	0
37 Over \$14,400 but not over \$27,000	0.51% of city taxable income in 38 excess of \$14,400
39 Over \$27,000 but not over \$45,000	\$64 plus 0.55% of excess over 40 \$27,000
41 Over \$45,000 but not over \$108,000	\$162 plus 0.51% of excess over 42 \$45,000
43 Over \$108,000	\$484 plus 0.51% of excess over 44 \$108,000

45 (2) Resident heads of households. The tax surcharge under this section
 46 on the city taxable income of every city resident head of household
 47 shall be determined in accordance with the following tables:

48 (A) For taxable years beginning after nineteen hundred eighty-nine and
 49 before nineteen hundred ninety-five:

1	If the city taxable income is:	The tax surcharge is:
2	Not over \$8,800	0
3	Over \$8,800 but not over \$16,500	0.51% of city taxable income in
4		excess of \$8,800
5	Over \$16,500 but not over \$27,500	\$39 plus 0.55% of excess over
6		\$16,500
7	Over \$27,500 but not over \$66,000	\$100 plus 0.51% of excess over
8		\$27,500
9	Over \$66,000	\$296 plus 0.51% of excess over
10		\$66,000

11 (B) For taxable years beginning after nineteen hundred ninety-four but
12 before nineteen hundred ninety-nine:

13	If the city taxable income is:	The tax surcharge is:
14	Not over \$7,350	0
15	Over \$7,350 but not over \$9,200	0.42% of city taxable income in
16		excess of \$7,350
17	Over \$9,200 but not over \$17,250	\$7 plus 0.51% of excess over
18		\$9,200
19	Over \$17,250 but not over \$28,750	\$48 plus 0.55% of excess over
20		\$17,250
21	Over \$28,750 but not over \$69,000	\$111 plus 0.51% of excess over
22		\$28,750
23	Over \$69,000	\$317 plus 0.51% of excess over
24		\$69,000

25 (3) Resident unmarried individuals, resident married individuals
26 filing separate returns and resident estates and trusts. The tax
27 surcharge under this section on the city taxable income of every city
28 resident individual who is not a city resident married individual who
29 makes a single return jointly with his or her spouse under subdivision
30 (b) of section 11-1751 of this chapter or a city resident head of house-
31 hold or a city resident surviving spouse, and on the city taxable income
32 of every city resident estate and trust shall be determined in accord-
33 ance with the following tables:

34 (A) For taxable years beginning after nineteen hundred eighty-nine and
35 before nineteen hundred ninety-five:

36	If the city taxable income is:	The tax surcharge is:
37	Not over \$9,000	0
38	Over \$9,000 but not over \$15,000	0.51% of city taxable income in
39		excess of \$9,000
40	Over \$15,000 but not over \$25,000	\$31 plus 0.55% of excess over
41		\$15,000
42	Over \$25,000 but not over \$60,000	\$86 plus 0.51% of excess over
43		\$25,000
44	Over \$60,000	\$264 plus 0.51% of excess over
45		\$60,000

46 (B) For taxable years beginning after nineteen hundred ninety-four but
47 before nineteen hundred ninety-nine:

48	If the city taxable income is:	The tax surcharge is:
49	Not over \$8,400	0
50	Over \$8,400 but not over \$15,000	0.51% of city taxable income in

1		excess of \$8,400
2	Over \$15,000 but not over \$25,000	\$33 plus 0.55% of excess over
3		\$15,000
4	Over \$25,000 but not over \$60,000	\$88 plus 0.51% of excess over
5		\$25,000
6	Over \$60,000	\$266 plus 0.51% of excess over
7		\$60,000

8 (c) The tax surcharge imposed pursuant to this section shall be admin-
 9 istered, collected and distributed by the commissioner of taxation and
 10 finance in the same manner as the taxes imposed pursuant to sections
 11 11-1701 and 11-1703 of this subchapter, and all of the provisions of
 12 this chapter, including sections 11-1706, 11-1721 and 11-1773 of this
 13 chapter, shall apply to the tax surcharge imposed by this section.

14 (d) (1) Notwithstanding subdivision (b) of this section, with respect
 15 to taxable years beginning in nineteen hundred ninety-three, nineteen
 16 hundred ninety-four, nineteen hundred ninety-five and nineteen hundred
 17 ninety-six, the mayor shall, by August first of nineteen hundred nine-
 18 ty-two, nineteen hundred ninety-four and nineteen hundred ninety-five,
 19 and by September fifteenth of nineteen hundred ninety-three, transmit to
 20 the commissioner of taxation and finance a certification setting forth
 21 the percentage of non-achievement regarding the combined police
 22 uniformed staffing level with respect to the fiscal year of the city
 23 ending on the immediately preceding June thirtieth, provided, however,
 24 that for the city fiscal year ending in nineteen hundred ninety-three
 25 the percentage of non-achievement shall be determined by the combined
 26 police uniformed staffing level existing on August thirtieth, nineteen
 27 hundred ninety-three, and further provided for all such fiscal years
 28 that the percentage of non-achievement shall be calculated according to
 29 the procedure specified in a memorandum of understanding relating to the
 30 New York city safe streets-safe city program and to the enactment of
 31 this subdivision dated February eleventh, nineteen hundred ninety-one,
 32 as amended, and executed by the governor, the temporary president of the
 33 senate, the speaker of the assembly, the minority leader of the senate,
 34 the minority leader of the assembly, the mayor and the speaker of the
 35 city council, any modification of such memorandum of understanding
 36 subsequently agreed upon by all such signatories in a single subsequent
 37 memorandum of understanding. If such percentage of non-achievement is
 38 equal to or exceeds twenty-five percent with respect to the fiscal year
 39 of the city of New York ending in nineteen hundred ninety-two, twenty
 40 percent with respect to the city fiscal year ending in nineteen hundred
 41 ninety-three or five percent with respect to the city fiscal years
 42 ending in nineteen hundred ninety-four and nineteen hundred ninety-five,
 43 then the rates of the tax surcharge imposed by this section for taxable
 44 years beginning in the calendar year beginning on January first next
 45 succeeding such August first or September fifteenth shall be the
 46 products of the rates set forth in subdivision (b) of this section and a
 47 percentage equal to the difference between one hundred percent and such
 48 percentage of non-achievement, such products computed to the nearest
 49 hundredth of a percent, and the dollar denominated amounts of the tax
 50 surcharge set forth in subdivision (b) of this section shall be reduced
 51 conformably.

52 (2) Notwithstanding subdivision (b) of this section, with respect to
 53 the taxable year beginning in nineteen hundred ninety-eight, the mayor
 54 shall, by August first of nineteen hundred ninety-seven, transmit to the
 55 state commissioner of taxation and finance a certification setting forth

1 the percentage of non-achievement regarding the police uniformed staff-
2 ing level with respect to the fiscal year ending on the immediately
3 preceding June thirtieth, provided, however, that such percentage of
4 non-achievement shall be calculated according to the procedure specified
5 in a new memorandum of understanding relating to the enactment of this
6 paragraph dated no later than thirty days after such enactment, as
7 executed by the governor, the temporary president of the senate, the
8 speaker of the assembly, the minority leader of the senate, the minority
9 leader of the assembly, the mayor and the speaker of the city council
10 and any modifications of such new memorandum of understanding subse-
11 quently agreed upon by all such signatories in a single subsequent memo-
12 randum of understanding. If such percentage of non-achievement exceeds
13 two percent with respect to the fiscal year of the city ending in nine-
14 teen hundred ninety-seven, then the rates of the tax surcharge author-
15 ized by this section for the taxable years beginning in the calendar
16 year beginning on January first, nineteen hundred ninety-eight shall be
17 the products of the rates set forth in subdivision (b) of this section
18 and a percentage equal to the difference between one hundred percent and
19 the portion of the percentage of non-achievement that is in excess of
20 two percent, such products computed to the nearest hundredth of a
21 percent, and the dollar denominated amounts of the tax surcharge set
22 forth in subdivision (b) of this section shall be reduced conformably.

23 (3) If the rates of the surcharge imposed by this section are modified
24 pursuant to paragraph one or paragraph two of this subdivision, the
25 state commissioner of taxation and finance shall promulgate regulations
26 stating the modified rates.

27 (e) Notwithstanding anything in this section or section 11-1798 of
28 this chapter to the contrary, of the total revenue, including interest
29 and penalties, from the tax surcharge imposed by this section which the
30 state comptroller is required to pay, after June thirtieth, nineteen
31 hundred ninety-two, to the chief fiscal officer of the city for payment
32 into the treasury of the city, one hundred ten million dollars thereof
33 paid to the chief fiscal officer during the fiscal year of the city
34 commencing July first, nineteen hundred ninety-two, two hundred million
35 dollars thereof paid to the chief fiscal officer during the fiscal year
36 of the city commencing July first, nineteen hundred ninety-three, one
37 hundred sixty-seven million dollars thereof paid to the chief fiscal
38 officer during the fiscal year of the city commencing July first, nine-
39 teen hundred ninety-four, and one hundred eighty-five million dollars
40 thereof paid to the chief fiscal officer during the fiscal year of the
41 city commencing July first, nineteen hundred ninety-five, shall be cred-
42 ited to and deposited in the criminal justice account established within
43 the general fund of the city for the implementation of the safe streets-
44 safe city program. The balance of such revenue shall be credited to the
45 general fund of the city and shall be applied exclusively to or in aid
46 or support of the city's provision of criminal justice and fire
47 protection services.

48 (f) Notwithstanding anything in this article to the contrary, of the
49 total revenue, including interest and penalties, from the tax surcharge
50 imposed pursuant to the authority of this section which the state comp-
51 troller is required to pay to the chief fiscal officer of the city for
52 payment into the treasury of the city, ninety million dollars thereof
53 paid to such chief fiscal officer during the fiscal year of the city
54 commencing during calendar year nineteen hundred ninety-six, and one
55 hundred eighty-five million dollars thereof paid to such chief fiscal
56 officer during the fiscal year of the city commencing during calendar

1 year nineteen hundred ninety-seven, shall be credited to and deposited
2 in a criminal justice account established by the city within its general
3 fund. The balance of such revenue from such tax surcharge which the
4 state comptroller is required to pay to such chief fiscal officer for
5 payment into the treasury of the city for the taxable years beginning in
6 the calendar years beginning on January first, nineteen hundred ninety-
7 seven and January first, nineteen hundred ninety-eight shall be credited
8 to the general fund of the city to be applied exclusively to or in aid
9 or support of the city's provision of criminal justice and fire
10 protection services; provided however, that, notwithstanding the forego-
11 ing, such balance shall be applied to implementation of the capital
12 program for public schools within the city and a supplemental capital
13 rehabilitation program for such schools, to the extent that such appli-
14 cation is necessary for the timely implementation of such programs in
15 accordance with the memorandum of understanding executed pursuant to
16 paragraph two of subdivision (d) of this section and any modifications
17 thereto.

18 § 11-1704.1 Additional tax. (a) (1) In addition to any other taxes
19 imposed by this chapter, there is hereby imposed for each taxable year
20 beginning after nineteen hundred ninety but before two thousand twenty-
21 seven, an additional tax on the city taxable income of every city resi-
22 dent individual, estate and trust, to be calculated for each taxable
23 year as follows: (i) for each taxable year beginning after nineteen
24 hundred ninety but before nineteen hundred ninety-nine, at the rate of
25 fourteen percent of the sum of the taxes for each such taxable year
26 determined pursuant to section 11-1701 and section 11-1704 of this
27 subchapter; and (ii) for each taxable year beginning after nineteen
28 hundred ninety-eight, at the rate of fourteen percent of the tax for
29 such taxable year determined pursuant to such section 11-1701 of this
30 subchapter.

31 (2) Notwithstanding paragraph one of this subdivision, for each taxa-
32 ble year beginning after two thousand but before two thousand two, the
33 additional tax shall be calculated as follows: (i) Resident married
34 individuals filing joint returns and resident surviving spouses. The
35 additional tax under this section for each taxable year on the tax
36 determined pursuant to section 11-1701 of this subchapter of every city
37 resident married individual who makes a single return jointly with his
38 or her spouse under subdivision (b) of section 11-1751 of this chapter
39 and on the tax determined pursuant to section 11-1701 of this subchapter
40 of every city resident surviving spouse shall be determined as follows:
41 (A) If the tax determined pursuant to section 11-1701 of this subchapter
42 is based on city taxable income equal to or less than ninety thousand
43 dollars, then the additional tax shall be 5.25% of such tax; (B) If the
44 tax determined pursuant to section 11-1701 of this subchapter is based
45 on city taxable income over ninety thousand dollars, then the additional
46 tax shall be the sum of 5.25% of such tax on city taxable income up to
47 and including ninety thousand dollars and 12.25% of such tax on city
48 taxable income in excess of ninety thousand dollars.

49 (ii) Resident heads of households. The additional tax under this
50 section for each taxable year on the tax determined pursuant to section
51 11-1701 of this subchapter of every city resident head of a household
52 shall be determined as follows: (A) If the tax determined pursuant to
53 section 11-1701 of this subchapter is based on city taxable income equal
54 to or less than sixty thousand dollars, then the additional tax shall be
55 5.25% of such tax; (B) If the tax determined pursuant to section 11-1701
56 of this subchapter is based on city taxable income over sixty thousand

1 dollars, then the additional tax shall be the sum of 5.25% of such tax
2 on city taxable income up to and including sixty thousand dollars and
3 12.25% of such tax on city taxable income in excess of sixty thousand
4 dollars.

5 (iii) Resident unmarried individuals, resident married individuals
6 filing separate returns and resident estates and trusts. The additional
7 tax under this section for each taxable year on the tax determined
8 pursuant to section 11-1701 of this subchapter of every city resident
9 individual who is not a married individual who makes a single return
10 jointly with his or her spouse under subdivision (b) of section 11-1751
11 of this chapter or a city resident head of a household or a city resi-
12 dent surviving spouse, and on the tax determined pursuant to section
13 11-1701 of this subchapter of every city resident estate and trust shall
14 be determined as follows: (A) If the tax determined pursuant to section
15 11-1701 of this subchapter is based on city taxable income equal to or
16 less than fifty thousand dollars, then the additional tax shall be 5.25%
17 of such tax; (B) If the tax determined pursuant to section 11-1701 of
18 this subchapter is based on city taxable income over fifty thousand
19 dollars, then the additional tax shall be the sum of 5.25% of such tax
20 on city taxable income up to and including fifty thousand dollars and
21 12.25% of such tax on city taxable income in excess of fifty thousand
22 dollars.

23 (b) The additional tax imposed pursuant to this section shall be
24 administered, collected and distributed by the commissioner of taxation
25 and finance in the same manner as the other taxes imposed pursuant to
26 this chapter, and all of the provisions of this chapter, including
27 sections 11-1706, 11-1721 and 11-1773, shall apply to the additional tax
28 imposed by this section.

29 § 11-1705 General provisions and definitions. (a) Accounting periods
30 and methods. (1) Accounting periods. A taxpayer's taxable year under
31 this chapter shall be the same as his or her taxable year for federal
32 income tax purposes.

33 (2) Change of accounting periods. If a taxpayer's taxable year is
34 changed for federal income tax purposes, his or her taxable year for
35 purposes of this chapter shall be similarly changed. If a taxable year
36 of less than twelve months results from a change of taxable year, the
37 city standard deduction and the city exemptions shall be prorated under
38 regulations of the tax commission.

39 (3) Accounting methods. A taxpayer's method of accounting under this
40 chapter shall be the same as his or her method of accounting for federal
41 income tax purposes. In the absence of any method of accounting for
42 federal income tax purposes, city taxable income shall be computed under
43 such method as in the opinion of the tax commission clearly reflects
44 income.

45 (4) Change of accounting methods. (A) If a taxpayer's method of
46 accounting is changed for federal income tax purposes, his or her method
47 of accounting for purposes of this chapter shall be similarly changed.

48 (B) If a taxpayer's method of accounting is changed, other than from
49 an accrual to an installment method, any additional tax which results
50 from adjustments determined to be necessary solely by reason of the
51 change shall not be greater than if such adjustments were ratably allo-
52 cated and included for the taxable year of the change and the preceding
53 taxable years, not in excess of two, during which the taxpayer used the
54 method of accounting from which the change is made.

55 (C) If a taxpayer's method of accounting is changed from an accrual to
56 an installment method, any additional tax for the year of such change of

1 method and for any subsequent year which is attributable to the receipt
2 of installment payments properly accrued in a prior year, shall be
3 reduced by the portion of tax for any prior taxable year attributable to
4 the accrual of such installment payments, in accordance with regulations
5 of the tax commission.

6 (b) City resident and city nonresident defined. (1) City resident
7 individual. A city resident individual means an individual:

8 (A) who is domiciled in this city, unless (i) the taxpayer maintains
9 no permanent place of abode in this city, maintains a permanent place of
10 abode elsewhere, and spends in the aggregate not more than thirty days
11 of the taxable year in this city, or (ii) (I) within any period of five
12 hundred forty-eight consecutive days the taxpayer is present in a
13 foreign country or countries for at least four hundred fifty days, and
14 (II) during the period of five hundred forty-eight consecutive days the
15 taxpayer, the taxpayer's spouse, unless such spouse is legally sepa-
16 rated, and the taxpayer's minor children are not present in this city
17 for more than ninety days, and (III) during any period of less than
18 twelve months, which would be treated as a separate taxable period
19 pursuant to section 11-1754 of this chapter, and which period is
20 contained within the period of five hundred forty-eight consecutive
21 days, the taxpayer is present in this city for a number of days which
22 does not exceed an amount which bears the same ratio to ninety as the
23 number of days contained in that period of less than twelve months bears
24 to five hundred forty-eight, or

25 (B) who maintains a permanent place of abode in this city and spends
26 in the aggregate more than one hundred eighty-three days of the taxable
27 year in this city, whether or not domiciled in this city for any portion
28 of the taxable year, unless such individual is in active service in the
29 armed forces of the United States.

30 (2) City nonresident individual. A city nonresident individual means
31 an individual who is not a city resident.

32 (3) City resident estate or trust. A city resident estate or trust
33 means:

34 (A) the estate of a decedent who at his or her death was domiciled in
35 this city,

36 (B) a trust, or a portion of a trust, consisting of property trans-
37 ferred by will of a decedent who at his or her death was domiciled in
38 this city, or

39 (C) a trust, or portion of a trust, consisting of the property of:

40 (i) a person domiciled in this city at the time such property was
41 transferred to the trust, if such trust or portion of a trust was then
42 irrevocable, or if it was then revocable and has not subsequently become
43 irrevocable; or

44 (ii) a person domiciled in this city at the time such trust, or
45 portion of a trust, became irrevocable, if it was revocable when such
46 property was transferred to the trust but has subsequently become irrev-
47 ocable.

48 For the purposes of this paragraph, a trust or portion of a trust is
49 revocable if it is subject to a power, exercisable immediately or at any
50 future time, to revest title in the person whose property constitutes
51 such trust or portion of a trust, and a trust or portion of a trust
52 becomes irrevocable when the possibility that such power may be exer-
53 cised has been terminated.

54 (D) (i) Provided, however, a resident trust is not subject to tax
55 under this article if all of the following conditions are satisfied:

56 (I) all the trustees are domiciled outside the city of New York; (II)

1 the entire corpus of the trusts, including real and tangible property,
2 is located outside the city of New York; and (III) all income and gains
3 of the trust are derived from or connected with sources outside of the
4 city of New York, determined as if the trust were a non-resident trust.

5 (ii) For purposes of item (II) of clause (i) of this subparagraph,
6 intangible property shall be located in this city if one or more of the
7 trustees are domiciled in the city of New York.

8 (iii) Provided further, that for the purposes of item (I) of clause
9 (i) of this subparagraph, a trustee which is a banking corporation as
10 defined in subdivision (a) of section 11-640 of this title and which is
11 domiciled outside the city of New York at the time it becomes a trustee
12 of the trust shall be deemed to continue to be a trustee domiciled
13 outside the city of New York notwithstanding that it thereafter other-
14 wise becomes a trustee domiciled in the city of New York by virtue of
15 being acquired by, or becoming an office or branch of, a corporate trust-
16 tee domiciled within the city of New York.

17 For the purposes of this subparagraph, a trust or portion of a trust
18 is revocable if it is subject to a power, exercisable immediately or at
19 any future time, to revest title in the person whose property consti-
20 tutes such trust or portion of a trust, and a trust or portion of a
21 trust becomes irrevocable when the possibility that such power may be
22 exercised has been terminated.

23 (4) City nonresident estate or trust. A city nonresident estate or
24 trust means an estate or trust which is not a city resident estate or
25 trust.

26 (5) Cross reference. For effect of a change of resident status, see
27 section 11-1754 of this chapter.

28 § 11-1706 Credits against tax. (a) Credit relating to net capital
29 gain. For taxable years beginning in nineteen hundred eighty-seven, a
30 credit against the tax imposed under section 11-1701 of this subchapter
31 shall be allowed. The amount of the credit shall be one-half of one
32 percent of net capital gain includible in city adjusted gross income for
33 the taxable year. The credit allowed by this subdivision shall not
34 exceed the tax imposed by section 11-1701 of this subchapter reduced by
35 the credits permitted under section 11-1721 of this chapter and subdivi-
36 sion (b) of this section.

37 (b) Household credit. (1) For taxable years beginning after nineteen
38 hundred eighty-six, a credit against the city personal income tax
39 imposed by section 11-1701 of this subchapter shall be allowed. The
40 credit, computed as described in paragraph two of this subdivision,
41 shall not exceed the tax imposed by section 11-1701 of this subchapter,
42 reduced by the credit permitted under section 11-1721 of this chapter.

43 (2) (A) For any individual who is not married nor the head of a house-
44 hold nor a surviving spouse, the amount of the credit shall be deter-
45 mined in accordance with the following table:

46	-----	
47	If household gross	The credit shall be:
48	income is:	
49		For taxable years
50		beginning after
51		1986 and before
52		1995
53		1996

1	Not over \$7,500	\$15	\$15
2	Over \$7,500 but not over		
3	\$10,000	\$10	\$15
4	Over \$10,000 but not over		
5	\$12,500	\$0	\$10

6 (B) For any husband and wife, head of household or surviving spouse,
 7 the amount of the credit shall be determined by multiplying the number
 8 of exemptions for which the taxpayer, or in the case of a husband and
 9 wife, taxpayers, is entitled to a deduction for the taxable year for
 10 federal income tax purposes under subsections (b) and (c) of section one
 11 hundred fifty-one of the internal revenue code by the credit factor for
 12 the taxable year as specified in the following table:

13	-----				
14	If household gross				The credit factor is:
15	income is:				
16		For taxable years			
17		beginning in			
18		1987	1988		
19		1989		For taxable years	
20		through		beginning after	
21		1995		1995	
22	-----				

23	Not over \$12,500	\$30	\$50	\$50	\$30
24	Over \$12,500 but not				
25	over \$15,000	\$20	\$40	\$50	\$30
26	Over \$15,000 but not				
27	over \$17,500	\$10	\$20	\$25	\$25
28	Over \$17,500 but not				
29	over \$20,000	\$0	\$15	\$15	\$15
30	Over \$20,000 but not				
31	over \$22,500	\$0	\$0	\$0	\$10

32 (3) For purposes of this subdivision:

33 (A) "Household gross income" shall mean the aggregate federal adjusted
 34 gross income of a household, as the term household is defined in subpar-
 35 agraph (B) of this paragraph, for the taxable year.

36 (B) "Household" means a husband and wife, a head of household, a
 37 surviving spouse, or an individual who is not married nor the head of a
 38 household nor a surviving spouse nor a taxpayer with respect to whom a
 39 deduction under subsection (c) of section one hundred fifty-one of the
 40 internal revenue code is allowable to another taxpayer for the taxable
 41 year.

42 (C) "Household gross income of a husband and wife" shall be the aggre-
 43 gate of their federal adjusted gross incomes for the taxable year irre-
 44 spective of whether joint or separate city income tax returns are filed.
 45 Provided, however, that a husband or wife who is required to file a
 46 separate city income tax return shall be permitted one-half the credit
 47 otherwise allowed his or her household, except as limited by paragraph
 48 one of this subdivision.

49 (D) "Household gross income" shall be computed in all cases as if each
 50 member of the household were a resident for the entire taxable year.

(E) If a taxpayer changes his or her status during his or her taxable year from resident to nonresident, or from nonresident to resident, the household credit shall be prorated according to the number of months in the period of residence. In the case of a husband and wife, if either or both changes his or her status from resident to nonresident or from nonresident to resident and separate returns are filed, the credit computed for the entire year shall be divided first as provided in subparagraph (C) of this paragraph and then prorated according to the number of months in the period of residence.

(c) State school tax reduction credit.

(1) For taxable years beginning after nineteen hundred ninety-seven and ending before two thousand sixteen, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subdivision, no credit shall be granted to an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(2) The amount of the credit under this paragraph shall be determined based upon the taxpayer's income as defined in subparagraph (ii) of paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law. For purposes of this paragraph, any taxpayer under subparagraphs (A) and (B) of this paragraph with income of more than two hundred fifty thousand dollars shall not receive a credit.

Beginning in the two thousand ten tax year and each tax year thereafter through two thousand fifteen, the "more than two hundred fifty thousand dollar" income limitation shall be adjusted by applying the inflation factor set forth herein, and rounding each result to the nearest multiple of one hundred dollars. The department shall establish the income limitation to be associated with each subsequent tax year by applying the inflation factor set forth herein to the figures that define the income limitation that were applicable to the preceding tax year, as determined pursuant to this subdivision, and rounding each result to the nearest multiple of one hundred dollars. Such determination shall be made no later than March first, two thousand ten and each year thereafter.

(A) Married individuals filing joint returns and surviving spouses. In the case of a husband and wife who make a single return jointly and of a surviving spouse:

For taxable years beginning:	The credit shall be:
in 2001-2005	\$125
in 2006	\$230
in 2007-2008	\$290
in 2009-2015	\$125

(B) All others. In the case of an unmarried individual, a head of a household or a married individual filing a separate return:

For taxable years beginning:	The credit shall be:
in 2001-2005	\$62.50
in 2006	\$115
in 2007-2008	\$145
in 2009-2015	\$62.50

1 (4) Husband and wife who make a joint return. If a husband and wife
2 make a single return jointly, the credit under this subdivision shall be
3 determined under paragraph two of this subdivision, if either of them
4 has attained the age of sixty-five on or before the close of the taxable
5 year.

6 (5) Part-year residents. If a taxpayer changes status during the taxa-
7 ble year from resident to nonresident, or from nonresident to resident,
8 the state school tax reduction credit shall be prorated according to the
9 number of months in the period of residence.

10 (c) Credit for unincorporated business taxes paid. (1) A city resident
11 individual, estate or trust whose city adjusted gross income includes
12 income, gain, loss or deductions from one or more unincorporated busi-
13 nesses conducted by such city resident individual, estate or trust that
14 are subject to the tax imposed by chapter five of this title, or a
15 distributive share of income, gain, loss and deductions of, or guaran-
16 teed payments from, one or more partnerships that are subject to the tax
17 imposed by such chapter, shall be allowed a credit as provided in para-
18 graph two of this subdivision against the tax otherwise due under
19 sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter.

20 (2) (A) Subject to the limitation set forth in subparagraph (B) of
21 this paragraph, the credit allowed to a taxpayer for a taxable year
22 under this subdivision shall be determined as follows:

23 (i) For taxable years beginning on or after January first, nineteen
24 hundred ninety-seven and before January first, two thousand seven:

25 (I) If the city taxable income is forty-two thousand dollars or less,
26 the credit shall be sixty-five percent of the amount determined in para-
27 graph three of this subdivision.

28 (II) If the city taxable income is greater than forty-two thousand
29 dollars but not greater than one hundred forty-two thousand dollars, the
30 amount of the credit shall be a percentage of the amount determined in
31 paragraph three of this subdivision, such percentage to be determined by
32 subtracting from sixty-five percent, one-tenth of a percentage point
33 (.001) for every increment of two hundred dollars, or fractional part
34 thereof, of city taxable income in excess of forty-two thousand dollars.

35 (III) If the city taxable income is greater than one hundred forty-two
36 thousand dollars, the credit shall be fifteen percent of the amount
37 determined in paragraph three of this subdivision.

38 (ii) For taxable years beginning on or after January first, two thou-
39 sand seven:

40 (I) If the city taxable income is forty-two thousand dollars or less,
41 the credit shall be one hundred percent of the amount determined in
42 paragraph three of this subdivision.

43 (II) If the city taxable income is greater than forty-two thousand
44 dollars but less than one hundred forty-two thousand dollars, the amount
45 of the credit shall be a percentage of the amount determined in para-
46 graph three of this subdivision, such percentage to be determined by
47 subtracting from one hundred percent, a percentage determined by
48 subtracting forty-two thousand dollars from city taxable income, divid-
49 ing the result by one hundred thousand dollars and multiplying by seven-
50 ty-seven percent.

51 (III) If the city taxable income is one hundred forty-two thousand
52 dollars or greater, the credit shall be twenty-three percent of the
53 amount determined in paragraph three of this subdivision.

54 (B) Notwithstanding anything to the contrary in subparagraph (A) of
55 this paragraph, the credit allowed to a taxpayer for a taxable year
56 under this subdivision shall not exceed the sum of the taxes that would

1 otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1
2 of this subchapter on such taxpayer for such taxable year after the
3 allowance of any other credits allowed by this section or section
4 11-1721 of this chapter.

5 (3) Subject to the provisions of subparagraph (C) of this paragraph,
6 the amount determined in this paragraph is the sum of:

7 (A) for each unincorporated business conducted by the taxpayer, the
8 tax imposed by chapter five of this title on such unincorporated busi-
9 ness for its taxable year ending with the taxable year of the taxpayer
10 and paid by the unincorporated business; and

11 (B) for each unincorporated business in which the taxpayer is a part-
12 ner, the product of:

13 (i) the sum of (I) the tax imposed by chapter five of this title on
14 such unincorporated business for its taxable year ending within or with
15 the taxable year of the partner and paid by the unincorporated business
16 and (II) the amount of any credit or credits taken by the unincorporated
17 business under subdivision (j) of section 11-503 of this title for its
18 taxable year ending within or with the taxable year of the partner; and

19 (ii) a fraction, the numerator of which is the net total of the part-
20 ner's distributive share of income, gain, loss and deductions of, and
21 guaranteed payments from, the unincorporated business for such taxable
22 year, and the denominator of which is the sum, for such taxable year, of
23 the net total distributive shares of income, gain, loss and deductions
24 of, and guaranteed payments to, all partners in the unincorporated busi-
25 ness for whom or which such net total, as separately determined for each
26 partner, is greater than zero.

27 (C) For a taxpayer that changes its status from a city resident to a
28 city nonresident or from a city nonresident to a city resident during
29 the taxable year:

30 (i) the amount determined in subparagraph (A) of this paragraph shall
31 be, with respect to each unincorporated business conducted by the
32 taxpayer, the tax imposed by chapter five of this title on such unincor-
33 porated business for its taxable year ending with the taxable year of
34 the taxpayer and paid by the unincorporated business, multiplied by a
35 fraction, the numerator of which is that portion of the income, gain,
36 loss and deductions of the unincorporated business included in the
37 taxpayer's adjusted gross income for the portion of the taxable year
38 during which the taxpayer was a city resident, and the denominator of
39 which is the total, for such taxable year, of the income, gain, loss and
40 deductions of the unincorporated business, and

41 (ii) the amount determined in clause (ii) of subparagraph (B) of this
42 paragraph shall be a fraction, the numerator of which is that portion of
43 the taxpayer's net total distributive share of income, gain, loss and
44 deductions of, and that portion of guaranteed payments from, the unin-
45 corporated business included in the taxpayer's city adjusted gross
46 income for the portion of the taxable year during which the taxpayer was
47 a city resident, and the denominator of which is the sum, for such tax-
48 able year, of the net total distributive shares of income, gain, loss and
49 deductions of, and guaranteed payments to, all partners in the unincor-
50 porated business, for whom or which such net total, as separately deter-
51 mined for each partner, is greater than zero.

52 (4) For purposes of subdivision (c) of section 11-1902 of this title,
53 in determining the amount of tax that a nonresident would be required to
54 pay if such nonresident were a resident of the city and subject to the
55 tax on personal income of residents, the credit allowed by this subdivi-
56 sion shall be taken into account.

1 (d) Earned income tax credit. (1) For taxable years beginning after
2 two thousand three, a credit against the city personal income tax shall
3 be allowed, equal to five percent of the earned income credit allowed
4 under section thirty-two of the internal revenue code for the same taxa-
5 ble year, and, for taxable years beginning after two thousand twenty-
6 one, a credit against the city personal income tax shall be allowed,
7 equal to a percentage determined pursuant to subparagraphs (A) through
8 (I) of this paragraph, of the earned income credit allowed under section
9 thirty-two of the internal revenue code for the same taxable year. For
10 purposes of this paragraph, "adjusted gross income" means New York
11 adjusted gross income as determined pursuant to article twenty-two of
12 the tax law. The percentage shall be:

13 (A) thirty percent, where the taxpayer's adjusted gross income for
14 such taxable year is less than five thousand dollars;

15 (B) thirty percent reduced by the product of two-tenths of a percent-
16 age point (0.002) and the amount of the taxpayer's adjusted gross income
17 for such taxable year in excess of four thousand nine hundred ninety-
18 nine dollars, where such taxpayer's adjusted gross income for such taxa-
19 ble year is equal to or greater than five thousand dollars and less than
20 seven thousand five hundred dollars;

21 (C) twenty-five percent, where the taxpayer's adjusted gross income
22 for such taxable year is equal to or greater than seven thousand five
23 hundred dollars and less than fifteen thousand dollars;

24 (D) twenty-five percent reduced by the product of two-tenths of a
25 percentage point (0.002) and the amount of the taxpayer's adjusted gross
26 income for such taxable year in excess of fourteen thousand nine hundred
27 ninety-nine dollars, where such taxpayer's adjusted gross income for
28 such taxable year is equal to or greater than fifteen thousand dollars
29 and less than seventeen thousand five hundred dollars;

30 (E) twenty percent, where the taxpayer's adjusted gross income for
31 such taxable year is equal to or greater than seventeen thousand five
32 hundred dollars and less than twenty thousand dollars;

33 (F) twenty percent reduced by the product of two-tenths of a percent-
34 age point (0.002) and the amount of such taxpayer's adjusted gross
35 income for such taxable year in excess of nineteen thousand nine hundred
36 ninety-nine dollars, where the taxpayer's adjusted gross income for such
37 taxable year is equal to or greater than twenty thousand dollars and
38 less than twenty-two thousand five hundred dollars;

39 (G) fifteen percent, where the taxpayer's adjusted gross income for
40 such taxable year is equal to or greater than twenty-two thousand five
41 hundred dollars and less than forty thousand dollars;

42 (H) fifteen percent reduced by the product of two-tenths of a percent-
43 age point (0.002) and the amount of the taxpayer's adjusted gross income
44 for such taxable year in excess of thirty-nine thousand nine hundred
45 ninety-nine dollars, where such taxpayer's adjusted gross income for
46 such taxable year is equal to or greater than forty thousand dollars and
47 less than forty-two thousand five hundred dollars; and

48 (I) ten percent where the taxpayer's adjusted gross income for such
49 taxable year is equal to or greater than forty-two thousand five hundred
50 dollars.

51 (2) In the case of a resident taxpayer, the credit provided by this
52 subdivision shall be allowed against the taxes authorized by this chap-
53 ter for the taxable year reduced by the credits permitted by this chap-
54 ter. If the credit exceeds the tax as so reduced, the taxpayer may
55 receive, and the state comptroller, subject to a certificate of the

1 commissioner of the state department of taxation and finance, shall pay
2 as an overpayment, without interest, the amount of such excess.

3 (3) If a taxpayer changes his or her status during the taxable year
4 from city resident to city nonresident, or from city nonresident to city
5 resident, the credit determined under this subdivision shall be limited
6 to the amount determined by multiplying the amount of such credit by a
7 fraction, the numerator of which is such taxpayer's city adjusted gross
8 income, for the period of residence, and the denominator of which is
9 such taxpayer's city adjusted gross income determined as if he or she
10 were a city resident for the entire taxable year. City adjusted gross
11 income shall be adjusted as provided in section 11-1754 of this chapter.
12 The credit as so limited shall be applied as provided in paragraph two
13 of this subdivision.

14 (4) Subject to the provisions of paragraph three of this subdivision,
15 in the case of a husband and wife who file a joint return, but who are
16 required to determine their city personal income taxes separately, the
17 credit authorized pursuant to this subdivision may be applied against
18 the tax of either or divided between them as they may elect. In the case
19 of a husband and wife who are not required to file a federal return, the
20 credit under this subsection shall be allowed only if such taxpayers
21 file a joint city personal income tax return.

22 (5) If the state commissioner of taxation and finance determines that
23 the taxpayer is eligible to receive the credit provided under this
24 subdivision but has not claimed such credit on his or her return, the
25 state commissioner of taxation and finance shall compute and issue any
26 refund for the allowable credit amount provided under this subdivision.
27 Any refund paid pursuant to this paragraph shall be deemed to be a
28 refund of an overpayment of tax as provided in section 11-1786 of this
29 chapter, provided, however, that no interest shall be paid thereon.

30 (e) Credit for certain household and dependent care services necessary
31 for gainful employment. (1) For taxable years beginning on or after
32 January first, two thousand seven, a taxpayer shall be allowed a credit
33 as provided herein equal to the applicable percentage of the credit
34 allowed under subsection (c) of section six hundred six of the tax law
35 with respect to qualifying individuals as defined in paragraph one of
36 subsection (b) of section twenty-one of the internal revenue code, with-
37 out regard to whether the taxpayer in fact claimed the credit under such
38 section twenty-one for the taxable year, who are dependents of the
39 taxpayer and who have not attained the age of four as of the end of the
40 taxable year. The applicable percentage shall be determined as follows:

41 (A) If household gross income as defined in subparagraph (A) of para-
42 graph three of subdivision (b) of this section is twenty-five thousand
43 dollars or less, the applicable percentage shall be seventy-five
44 percent.

45 (B) If such household gross income is greater than twenty-five thou-
46 sand dollars but not greater than thirty thousand dollars, the applica-
47 ble percentage shall be seventy-five percent multiplied by one minus a
48 fraction, the numerator of which is such household gross income less
49 twenty-five thousand dollars and the denominator of which is five thou-
50 sand dollars.

51 (C) If such household gross income is greater than thirty thousand
52 dollars, the applicable percentage shall be zero.

53 (2) The credit under this subdivision shall be allowed against the
54 taxes imposed by this chapter reduced by the credits permitted by this
55 chapter. If the credit exceeds the tax as so reduced, the taxpayer may
56 receive, and the state comptroller, subject to the certificate of the

1 state commissioner of taxation and finance, shall pay as an overpayment,
2 without interest, the amount of such excess, provided, however, in the
3 case of a taxpayer who is a part-year resident of New York city any such
4 overpayment under this paragraph shall be limited to the amount of such
5 excess multiplied by a fraction, the numerator of which is federal
6 adjusted gross income for the period of residence, computed as if the
7 taxable year for federal income tax purposes were limited to the period
8 of residence, and the denominator of which is federal adjusted gross
9 income for the taxable year.

10 (3) In the case of a husband and wife who filed a joint federal
11 return, but who are required to determine their New York city taxes
12 separately, the credit allowed pursuant to this subdivision may only be
13 applied against the tax imposed on the spouse with the lower taxable
14 income, computed without regard to such credit, provided, however, if
15 the spouse with the lower taxable income is a nonresident of the city,
16 no credit shall be allowed under this subdivision. In the case of a
17 husband and wife who are not required to file a federal return, the
18 credit under this subdivision shall be allowed only if such taxpayers
19 file a joint New York city income tax return.

20 (f) Credit for general corporation tax paid. (1) A city resident indi-
21 vidual, estate or trust whose city adjusted gross income includes a pro
22 rata share of income, loss and deductions described in paragraph one of
23 subsection (a) of section thirteen hundred sixty-six of the internal
24 revenue code, from one or more New York S corporations as defined in
25 subdivision one-A of section two hundred eight of the tax law, or from
26 one or more QSSSSs as defined in subdivision one-B of section two hundred
27 eight of the tax law, that are exempt QSSSSs by reason of clause (A) of
28 subparagraph one of paragraph (k) of subdivision nine of section two
29 hundred eight of the tax law, on which a tax is imposed by subchapter
30 two of chapter six of this title, shall be allowed a credit as provided
31 in paragraph two of this subdivision against the tax otherwise due under
32 sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this chapter.

33 (2) (A) Subject to the limitations set forth in subparagraphs (B) and
34 (C) of this paragraph, the credit allowed to a taxpayer for a taxable
35 year under this subdivision shall be determined as follows:

36 (i) For taxable years beginning on or after January first, two thou-
37 sand fourteen and before July first, two thousand nineteen:

38 (I) If the city taxable income is thirty-five thousand dollars or
39 less, the amount of the credit shall be one hundred percent of the
40 amount determined in paragraph three of this subdivision.

41 (II) If the city taxable income is greater than thirty-five thousand
42 dollars but less than one hundred thousand dollars, the amount of the
43 credit shall be a percentage of the amount determined in paragraph three
44 of this subdivision, such percentage to be determined by subtracting
45 from one hundred percent, a percentage determined by subtracting thir-
46 ty-five thousand dollars from city taxable income, dividing the result
47 by sixty-five thousand dollars and multiplying by one hundred percent.

48 (III) If the city taxable income is one hundred thousand dollars or
49 greater, no credit shall be allowed.

50 (IV) Provided further that for any taxable year of a taxpayer for
51 which this credit is effective that encompasses days occurring after
52 June thirtieth, two thousand nineteen, the amount of the credit deter-
53 mined in item (I) or (II) of this clause shall be multiplied by a frac-
54 tion, the numerator of which is the number of days in the taxpayer's
55 taxable year occurring on or before June thirtieth, two thousand nine-

1 teen, and the denominator of which is the number of days in the taxpay-
2 er's taxable year.

3 (B) Notwithstanding anything to the contrary in subparagraph (A) of
4 this paragraph, the credit allowed to a taxpayer for a taxable year
5 under this subdivision shall not exceed the sum of the taxes that would
6 otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1
7 of this subchapter on such taxpayer for such taxable year after the
8 allowance of any other credits allowed by subdivisions (a), (b) and (c)
9 of this section, and section 11-1721 of this chapter.

10 (C) Notwithstanding anything to the contrary in subparagraph (A) of
11 this paragraph, no credit shall be allowed for any amount of tax
12 imposed, or credit allowed, by subchapter two of chapter six of this
13 title on, or to, a combined group of corporations including a New York S
14 corporation or an exempt QSSS, except where the combined group consists
15 exclusively of one or more New York S corporations and one or more
16 exempt QSSSs of such corporations as described in paragraph one of this
17 subdivision, provided that each of the New York S corporations included
18 in the group is wholly owned by the same interests and in the same
19 proportions as each other New York S corporation included in the group.

20 (3) Subject to the provisions of subparagraph (B) of this paragraph
21 and subparagraph (C) of paragraph two of this subdivision, the amount
22 determined in this paragraph is the sum of the taxpayer's pro rata share
23 of the amounts determined in subparagraph (A) of this paragraph for each
24 New York S corporation, or exempt QSSS, described in paragraph one of
25 this subdivision, a pro rata share of whose income, loss and deductions
26 described in paragraph one of subsection (a) of section thirteen hundred
27 sixty-six of the internal revenue code, is included in the taxpayer's
28 city adjusted gross income.

29 (A) The amount determined in this subparagraph is the sum of:

30 (i) the taxes imposed by subchapter two of chapter six of this title
31 on such corporation, or a combined group including such corporation, for
32 its taxable year ending within or with the taxable year of the taxpayer
33 and paid by such corporation, or combined group; and

34 (ii) the amount of any credit or credits taken by such corporation, or
35 a combined group including such corporation, under subdivision eighteen
36 of section 11-604 of this title for its taxable year ending within or
37 with the taxable year of the taxpayer.

38 (B) For purposes of this subdivision, the taxpayer's pro rata share of
39 the amount in subparagraph (A) of this paragraph for the taxable year
40 shall be the amount determined with respect to the taxpayer:

41 (i) by assigning an equal portion of the amount in subparagraph (A) of
42 this paragraph to each day of the corporation's taxable year on which
43 the corporation has shares outstanding,

44 (ii) then by dividing that portion pro rata among the shares outstand-
45 ing on that day; provided, however,

46 (iii) if the taxable year of such corporation for purposes of chapter
47 six of this title is different from its New York S year or S short year
48 as defined in subdivision one-A of section two hundred eight of the tax
49 law, only those portions that are assigned to days of the taxable year
50 that are also days of the New York S year or S short year shall be taken
51 into account in determining the shareholder's pro rata share of the
52 amount determined in subparagraph (A) of this paragraph.

53 (g) Credit for city pass-through entity tax. (1) A taxpayer who is a
54 partner or member of an electing city partnership and a taxpayer share-
55 holder of an electing city resident S corporation subject to tax under
56 article twenty-four-B of the tax law shall be entitled to a credit

1 against the tax imposed by such article. For purposes of this subdivi-
2 sion, the terms "electing city partnership," "electing city resident S
3 corporation," "city pass-through entity tax," and "direct share of city
4 pass-through entity tax" shall have the same meanings as used in article
5 twenty-four-B of the tax law.

6 (2) The amount of the credit shall be equal to the partner's, member's
7 or shareholder's direct share of the city pass-through entity tax.

8 (3) If a taxpayer is a partner, member or shareholder in more than one
9 electing city partnership and/or electing city resident S corporation
10 that is subject to tax pursuant to article twenty-four-B of the tax law,
11 the amount of the credit of such taxpayer shall be equal to the sum of
12 the amounts of such credits calculated pursuant to paragraph two of this
13 subdivision with regard to each entity in which such taxpayer has a
14 direct ownership interest.

15 (4) If the amount of the credit allowable pursuant to this subdivision
16 for any taxable year exceeds the tax due for such year pursuant to arti-
17 cle twenty-four-B of the tax law, the excess amount shall be treated as
18 an overpayment, to be credited or refunded, without interest.

19 (5) Limitation on credit. No credit shall be allowed to a taxpayer
20 under this subdivision unless the electing city partnership or electing
21 city resident S corporation provided sufficient information to identify
22 such taxpayer on its city pass-through entity tax return as required
23 under paragraph two of subsection (c) of section eight hundred seventy-
24 two of the tax law for an electing city partnership or paragraph two of
25 subsection (d) of section eight hundred seventy-two of the tax law for
26 an electing city resident S corporation. The credit allowed to a taxpay-
27 er under this subdivision shall not exceed the direct share of city
28 pass-through entity tax reported by such electing city partnership or
29 electing city resident S corporation attributable to such taxpayer on
30 such electing city partnership's or such electing city resident S corpo-
31 ration's return filed pursuant to section eight hundred seventy-two of
32 the tax law.

33 § 11-1707 Meaning of terms. (a) General. Any term used in this chap-
34 ter shall have the same meaning as when used in a comparable context in
35 the laws of the United States relating to federal income taxes, unless a
36 different meaning is clearly required but such meaning shall be subject
37 to the exceptions or modifications prescribed in this chapter or by
38 statute. Any reference in this chapter to the laws of the United States
39 shall mean the provisions of the internal revenue code of nineteen
40 hundred eighty-six, unless a reference to the internal revenue code of
41 nineteen hundred fifty-four is clearly intended, and amendments thereto,
42 and other provisions of the laws of the United States relating to feder-
43 al income taxes, as the same may be or become effective at any time or
44 from time to time for the taxable year, as included and quoted in the
45 appendices, including any supplements and additions thereto, to this
46 chapter. Provided however, for taxable years beginning before January
47 first, two thousand twenty-two, any amendments made to the internal
48 revenue code of nineteen hundred eighty-six after March first, two thou-
49 sand twenty shall not apply to this chapter. Such quotation of the
50 aforesaid laws of the United States is intended to make them a part of
51 this chapter and to avoid constitutional uncertainties which might
52 result if such laws were merely incorporated by reference. The quotation
53 of a provision of the internal revenue code or of any other law of the
54 United States in such appendices shall not necessarily mean that it is
55 applicable or has relevance to this chapter.

1 (b) Marital or other status. An individual's marital or other status
2 under section 11-1701 of this chapter and section 11-1714 of this chap-
3 ter shall be the same as his or her marital or other status for purposes
4 of establishing the applicable federal income tax rates.

5 (c) "City" and "this city" as used in this chapter means the city of
6 Staten Island; "tax commission" as used in this chapter means the tax
7 commission of the state of New York; and "state" or "this state" as used
8 in this chapter means the state of New York.

9 SUBCHAPTER 2
10 RESIDENTS

11 § 11-1711 City taxable income of a city resident individual. (a)
12 General. The city taxable income of a city resident individual shall be
13 his or her city adjusted gross income less his or her city deduction and
14 city exemptions, as determined under this chapter.

15 (b) Husband and wife.

16 (1) If the federal taxable income of husband or wife, both of whom
17 are residents, is determined on a separate federal return, their city
18 taxable incomes shall be separately determined.

19 (2) If the federal taxable income of husband and wife, both of whom
20 are residents, is determined on a joint federal return, their city taxa-
21 ble income shall be determined jointly.

22 (3) If neither husband or wife, both of whom are residents, files a
23 federal return:

24 (A) their tax shall be determined on their joint city taxable income,
25 or

26 (B) separate taxes may be determined on their separate city taxable
27 incomes if they both so elect.

28 (4) If either husband or wife is a resident and the other is a nonres-
29 ident, a separate tax shall be determined on the city taxable income of
30 the resident spouse on a separate form unless such husband and wife
31 determine their federal taxable income jointly and both elect to deter-
32 mine their joint city taxable income as if both were residents.

33 § 11-1712 City adjusted gross income of a city resident individual.

34 (a) General. The city adjusted gross income of a city resident indi-
35 vidual means his or her federal adjusted gross income as defined in the
36 laws of the United States for the taxable year, with the modifications
37 specified in this section.

38 (b) Modifications increasing federal adjusted gross income. There
39 shall be added to federal adjusted gross income: (1) Interest income
40 on obligations of any state other than this state, or of a political
41 subdivision of any other such state unless created by compact or agree-
42 ment to which this state is a party, to the extent not properly includi-
43 ble in federal adjusted gross income;

44 (2) Interest or dividend income on obligations or securities of any
45 authority, commission, or instrumentality of the United States, which
46 the laws of the United States exempt from federal income tax but not
47 from state income taxes;

48 (3) Income taxes. (A) General. Income taxes imposed by this state or
49 any other taxing jurisdiction, to the extent deductible in determining
50 federal adjusted gross income and not credited against federal income
51 tax.

52 (B) Shareholders of S corporations. In the case of a shareholder of an
53 S corporation, with respect to taxes imposed upon or payable by the
54 corporation, the term "income taxes" in subparagraph (A) of this para-

1 graph shall also include the tax imposed under article nine-A of the tax
2 law, regardless of the measure of such tax, but shall not otherwise
3 include taxes imposed by this or any other state of the United States,
4 or any political subdivision of this or any other state, or the District
5 of Columbia.

6 (4) Interest on indebtedness incurred or continued to purchase or
7 carry obligations or securities the interest on which is exempt from tax
8 under this chapter, to the extent deductible in determining federal
9 adjusted gross income.

10 (5) Expenses paid or incurred during the taxable year for: (i) the
11 production or collection of income which is exempt from tax under this
12 chapter, or (ii) the management, conservation or maintenance of property
13 held for the production of such income, and the amortizable bond premium
14 for the taxable year on any bond the interest on which is exempt from
15 tax under this chapter, to the extent that such expenses and premiums
16 are deductible in determining federal adjusted gross income.

17 (6) In the case of a taxpayer who has exercised the election permit-
18 ted by subdivision (g) or (h) of this section, the amount or amounts
19 required by said subdivisions to be added to federal adjusted gross
20 income.

21 (7) In the case of a taxpayer who is a shareholder of a corporation
22 organized under article fifteen or authorized to do business in this
23 state under article fifteen-A of the business corporation law, for the
24 taxpayer's taxable years beginning before nineteen hundred eighty-eight,
25 the amount which is deductible by such corporation under paragraph one,
26 two or three of subsection (a) of section four hundred four of the
27 internal revenue code for its taxable year ending in or with such
28 taxpayer's taxable year for contributions paid on behalf of such taxpay-
29 er minus the lesser of fifteen thousand dollars or fifteen percent of
30 the earned income derived by such taxpayers from such corporation during
31 such taxpayer's taxable year. In the case of a taxpayer on whose behalf
32 contributions are paid under more than one plan to which this paragraph
33 applies or under a plan, contributions to which on his or her behalf are
34 subject to the limitations provided in subsection (e) of section four
35 hundred four of the internal revenue code, this paragraph shall apply
36 with respect to the aggregate of the contributions paid on his or her
37 behalf under all such plans.

38 (8) In the case of a taxpayer who is a shareholder of a corporation
39 organized under article fifteen or authorized to do business in this
40 state under article fifteen-A of the business corporation law, the
41 amount which is required to be paid as a tax by such corporation pursu-
42 ant to subsection (a) of section thirty-one hundred eleven of the inter-
43 nal revenue code with respect to the wages of such taxpayer for the
44 calendar year ending in or with such taxpayer's taxable year.

45 (10) The amount required to be added to federal adjusted gross income
46 pursuant to subdivision (i) of this section.

47 (14) The amount required to be added to federal adjusted gross income
48 pursuant to subdivision (1) of this section.

49 (15) The amount allowed as an exclusion or deduction for the special
50 additional mortgage recording taxes imposed by subdivision one-a of
51 section two hundred fifty-three of the tax law in determining federal
52 adjusted gross income for such taxable year.

53 (16) Unless the credit allowed pursuant to subsection (f) of section
54 six hundred six of the tax law is reflected in the computation of the
55 gain or loss so as to result in an increase in such gain or decrease in
56 such loss, for federal income tax purposes, from the sale or other

1 disposition of the property with respect to which the special additional
2 mortgage recording tax imposed pursuant to subdivision one-a of section
3 two hundred fifty-three of such law was paid, the amount of the special
4 additional mortgage recording tax imposed by subdivision one-a of
5 section two hundred fifty-three of such law which was paid and which is
6 reflected in the computation of the basis of the property so as to
7 result in a decrease in such gain or increase in such loss for federal
8 income tax purposes from the sale or other disposition of the property
9 with respect to which such tax was paid.

10 (17) The amount required to be added to federal adjusted gross income
11 pursuant to subdivision (r) of this section.

12 (18) In the case of a shareholder of an S corporation: (A) where the
13 election provided for in subsection (a) of section six hundred sixty of
14 the tax law is in effect with respect to such corporation, an amount
15 equal to his or her pro rata share of the corporation's reductions for
16 taxes described in paragraphs two and three of subsection (f) of section
17 thirteen hundred sixty-six of the internal revenue code, and

18 (B) in the case of a New York S termination year, subparagraph (A) of
19 this paragraph shall apply to the amount of reductions for taxes deter-
20 mined under subdivision (s) of this section.

21 (19) In the case of a shareholder of an S corporation: (A) where the
22 election provided for in subsection (a) of section six hundred sixty of
23 the tax law has not been made with respect to such corporation, any item
24 of loss or deduction of the corporation included in federal gross income
25 pursuant to section thirteen hundred sixty-six of the internal revenue
26 code, and

27 (B) in the case of a New York S termination year, subparagraph (A) of
28 this paragraph shall apply to the amounts of loss or deduction deter-
29 mined under subdivision (s) of this section.

30 (20) S corporation distributions to the extent not included in federal
31 gross income for the taxable year because of the application of section
32 thirteen hundred sixty-eight, subsection (e) of section thirteen hundred
33 seventy-one or subsection (c) of section thirteen hundred seventy-nine
34 of the internal revenue code which represent income not previously
35 subject to tax under this chapter because the election provided for in
36 subsection (a) of section six hundred sixty of the tax law had not been
37 made. Any such distribution treated in the manner described in paragraph
38 two of subsection (b) of section thirteen hundred sixty-eight of the
39 internal revenue code for federal income tax purposes shall be treated
40 as ordinary income for purposes of this chapter.

41 (21) In relation to the disposition of stock or indebtedness of a
42 corporation which elected under subchapter s of chapter one of the
43 internal revenue code for any taxable year of such corporation begin-
44 ning, in the case of a corporation taxable under article nine-A of the
45 tax law, after December thirty-first, nineteen hundred eighty, the
46 amount required to be added to federal adjusted gross income pursuant to
47 subdivision (n) of this section.

48 (22) The amounts required to be added to federal adjusted gross income
49 pursuant to subdivision (q) of this section.

50 (23) 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 the taxpayer claimed as a deduction in computing its federal
56 adjusted gross income solely as a result of an election made pursuant to

1 the provisions of such paragraph eight as it was in effect for agree-
2 ments entered into prior to January first, nineteen hundred eighty-four;

3 (24) 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 would have been required to include in the computa-
9 tion of its federal adjusted gross income had it not made the election
10 permitted pursuant to such paragraph eight as it was in effect for
11 agreements entered into prior to January first, nineteen hundred eight-
12 y-four;

13 (25) For taxable years beginning after December thirty-first, nineteen
14 hundred eighty-one, except with respect to recovery property subject to
15 the provisions of section two hundred eighty-F of the internal revenue
16 code and recovery property placed in service in this state in taxable
17 years beginning after December thirty-first, nineteen hundred eighty-
18 four, the amount allowable as a deduction under section one hundred
19 sixty-eight of the internal revenue code;

20 (25) In the case of property placed in service in taxable years begin-
21 ning before nineteen hundred ninety-four, for taxable years beginning
22 after December thirty-first, nineteen hundred eighty-one, except with
23 respect to property subject to the provisions of section two hundred
24 eighty-F of the internal revenue code and property subject to the
25 provisions of section one hundred sixty-eight of the internal revenue
26 code which is placed in service in this state in taxable years beginning
27 after December thirty-first, nineteen hundred eighty-four, the amount
28 allowable as a deduction determined under section one hundred sixty-
29 eight of the internal revenue code.

30 (26) The amount of member or employee contributions to a retirement
31 system or pension fund picked up or paid by the employer pursuant to
32 subdivision f of section five hundred seventeen or subdivision d of
33 section six hundred thirteen of the retirement and social security law
34 or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title
35 thirteen of the code of the preceding municipality or subdivision nine-
36 teen of section twenty-five hundred seventy-five of the education law.

37 (26-a) The amount of member or employee contributions to a retirement
38 system or pension fund picked up or paid by the employer for members of
39 the Manhattan and Bronx surface transportation authority pension plan
40 and treated as employer contributions in determining income tax treat-
41 ment under subdivision (h) of section four hundred fourteen of the
42 Internal Revenue Code.

43 (27) Upon the disposition of recovery property to which paragraph
44 twenty-six of subdivision (c) of this section applies, the amount, if
45 any, by which the aggregate of the modifications described in such para-
46 graph twenty-six attributable to such property exceeds the aggregate of
47 the modifications described in paragraph twenty-five of this subdivision
48 attributable to such property; and

49 (27) Upon the disposition of property to which paragraph twenty-six of
50 subdivision (c) of this section applies, the amount, if any, by which
51 the aggregate of the modifications described in such paragraph twenty-
52 six attributable to such property exceeds the aggregate of the modifica-
53 tions described in paragraph twenty-five of this subdivision attribut-
54 able to such property.

55 (29) When gain from the sale or other disposition of property is
56 included in federal gross income, the amount of reduction in the basis

1 of such property attributable to credit for solar and wind energy
2 systems pursuant to paragraph nine of subsection (g) of section six
3 hundred six of the tax law; but for taxable years beginning before nine-
4 teen hundred eighty-seven, if such gain affects the determination of a
5 net capital gain for federal income tax purposes, forty percent of such
6 amount.

7 (31) The amount deducted or deferred from an employee's salary under a
8 flexible benefits program established pursuant to section twenty-three
9 of the general municipal law or section one thousand two hundred ten-a
10 of the public authorities law.

11 (32) The amount by which an employee's salary is reduced pursuant to
12 the provisions of subdivision b of section 12-126.1 and subdivision b of
13 section 12-126.2 of the code of the preceding municipality.

14 (33) Real property taxes paid on qualified agricultural property and
15 deducted in determining federal adjusted gross income, to the extent of
16 the amount of the agricultural property tax credit allowed under
17 subsection (n) or (i) of section six hundred six of the tax law.

18 (34) The amount of any deduction allowed pursuant to section one
19 hundred ninety-nine of the internal revenue code.

20 (35) The amount of any federal deduction for taxes imposed under arti-
21 cle twenty-three of the tax law.

22 (36) In the case of a beneficiary of a trust that, in any tax year
23 after its creation including its first tax year, was not subject to tax
24 pursuant to subparagraph (D) of paragraph three of subdivision (b) of
25 section 11-1705 of this chapter, except for an incomplete gift non-gran-
26 tor trust, as defined by paragraph thirty-seven of this subdivision, the
27 amount described in the first sentence of section six hundred sixty-sev-
28 en of the internal revenue code for the tax year to the extent not
29 already included in federal gross income for the tax year, except that,
30 in computing the amount to be added under this paragraph, such benefici-
31 ary shall disregard (i) subsection (c) of section six hundred sixty-five
32 of the internal revenue code; (ii) the income earned by such trust in
33 any tax year in which the trust was subject to tax under this article;
34 and (iii) the income earned by such trust in a taxable year prior to
35 when the beneficiary first became a resident of the city or in any taxa-
36 ble year starting before January first, two thousand fourteen. Except
37 as otherwise provided in this paragraph, all of the provisions of the
38 internal revenue code that are relevant to computing the amount
39 described in the first sentence of subsection (a) of section six hundred
40 sixty-seven of the internal revenue code shall apply to the provisions
41 of this paragraph with the same force and effect as if the language of
42 those internal revenue code provisions had been incorporated in full
43 into this paragraph, except to the extent that any such provision is
44 either inconsistent with or not relevant to this paragraph.

45 (37) In the case of a taxpayer who transferred property to an incom-
46 plete gift non-grantor trust, the income of the trust, less any
47 deductions of such trust, to the extent such income and deductions of
48 such trust would be taken into account in computing the taxpayer's
49 federal taxable income if such trust in its entirety were treated as a
50 grantor trust for federal tax purposes. For purposes of this paragraph,
51 an "incomplete gift non-grantor trust" means a resident trust that meets
52 the following conditions: (i) the trust does not qualify as a grantor
53 trust under section six hundred seventy-one through six hundred seven-
54 ty-nine of the internal revenue code, and (ii) the grantor's transfer of
55 assets to the trust is treated as an incomplete gift under section twen-

1 ty-five hundred eleven of the internal revenue code, and the regulations
2 thereunder.

3 (38) The amount contributed to any or all of the following accounts
4 within the charitable gifts trust fund set forth in section ninety-two-
5 gg of the state finance law, to the extent the amount is claimed as an
6 itemized deduction pursuant to section six hundred fifteen of the tax
7 law: the health charitable account established by paragraph a of subdi-
8 vision four of section ninety-two-gg of the state finance law, or the
9 elementary and secondary education charitable account established by
10 paragraph b of subdivision four of section ninety-two-gg of the state
11 finance law.

12 (39) The amount of any gain excluded from federal gross income for the
13 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
14 section one thousand four hundred-Z-two of the internal revenue code.

15 (c) Modifications reducing federal adjusted gross income. There
16 shall be subtracted from federal adjusted gross income:

17 (1) Interest income on obligations of the United States and its
18 possessions to the extent includible in gross income for federal income
19 tax purposes; such interest income shall include the amount received as
20 dividends from a regulated investment company, as defined in section
21 eight hundred fifty-one of the internal revenue code, which has been
22 designated as the amount of such interest income in a written notice to
23 shareholders not later than sixty days following the close of its taxa-
24 ble year; provided that, at the close of each quarter of the taxable
25 year of such regulated investment company, at least fifty percent of the
26 value of its total assets, as defined in subsection (c) of section eight
27 hundred fifty-one of the internal revenue code, consists of obligations
28 of the United States and its possessions. The aggregate amount so desig-
29 nated by the regulated investment company for its taxable year shall not
30 exceed the amount determined by multiplying the total distributions paid
31 by such regulated investment company to its shareholders with respect to
32 that taxable year, attributable to income earned in that year, including
33 any such distributions paid after the close of the taxable year, as
34 described in section eight hundred fifty-five of the internal revenue
35 code, by the ratio that the interest income received in that taxable
36 year on obligations of the United States and its possessions, after
37 reduction for the deductions and expenses directly or indirectly attrib-
38 utable thereto, bears to the investment company taxable income of such
39 regulated investment company for such taxable year, determined without
40 regard to subparagraph (D) of paragraph two of subsection (b) of section
41 eight hundred fifty-two of the internal revenue code;

42 (2) Interest or dividend income on obligations or securities of any
43 authority, commission or instrumentality of the United States to the
44 extent includible in gross income for federal income tax purposes but
45 exempt from state income taxes under the laws of the United States;

46 (3) (i) Pensions to officers and employees of this state, its subdivi-
47 sions and agencies, to the extent includible in gross income for federal
48 income tax purposes;

49 (ii) Pensions to officers and employees of the United States of Ameri-
50 ca, any territory or possession or political subdivision of such terri-
51 tory or possession, the District of Columbia, or any agency or instru-
52 mentality of such, to the extent includible in gross income for federal
53 income tax purposes;

54 (3-a) Pensions and annuities received by an individual who has
55 attained the age of fifty-nine and one-half, not otherwise excluded
56 pursuant to paragraph three of this subdivision, to the extent includi-

1 ble in gross income for federal income tax purposes, but not in excess
2 of twenty thousand dollars, which are periodic payments attributable to
3 personal services performed by such individual prior to his or her
4 retirement from employment, which arise: (i) from an employer-employee
5 relationship or (ii) from contributions to a retirement plan which are
6 deductible for federal income tax purposes. However, the term "pensions
7 and annuities" shall also include distributions received by an individ-
8 ual who has attained the age of fifty-nine and one-half from an individ-
9 ual retirement account or an individual retirement annuity, as defined
10 in section four hundred eight of the internal revenue code, and distrib-
11 utions received by an individual who has attained the age of fifty-nine
12 and one-half from self-employed individual and owner-employee retirement
13 plans which qualify under section four hundred one of the internal
14 revenue code, whether or not the payments are periodic in nature. Never-
15 theless, the term "pensions and annuities" shall not include any lump
16 sum distribution, as defined in subparagraph (A) of paragraph four of
17 subsection (e) of section four hundred two of the internal revenue code
18 and taxed under section six hundred three of the tax law. Where a
19 husband and wife file a joint city personal income tax return, the
20 modification provided for in this paragraph shall be computed as if they
21 were filing separate city personal income tax returns. Where a payment
22 would otherwise come within the meaning of the term "pensions and annui-
23 ties" as set forth in this paragraph except that such individual is
24 deceased, such payment shall, nevertheless, be treated as a pension or
25 annuity for purposes of this paragraph if such payment is received by
26 such individual's beneficiary.

27 (3-b) (i) Disability income included in federal gross income, to the
28 extent that such disability income would have been excluded from federal
29 gross income pursuant to the provisions of subsection (d) of section one
30 hundred five of the internal revenue code of nineteen hundred fifty-four
31 had such provisions continued in effect for taxable years commencing
32 after December thirty-first, nineteen hundred eighty-three as they were
33 in effect immediately prior to the repeal of such subsection. Notwith-
34 standing the provisions of this subparagraph, the sum of disability
35 income excluded pursuant to this paragraph, and pension and annuity
36 income excluded pursuant to paragraph three-a of this subdivision, shall
37 not exceed twenty thousand dollars.

38 (ii) Notwithstanding subdivision (f) of this section, if a husband and
39 wife determine their federal income tax on a joint return but are
40 required to determine their city income taxes separately, the amounts of
41 exclusion allowed under subparagraph (i) of this paragraph shall be
42 determined in the same joint manner as such amounts would have been
43 determined under the provisions of paragraph five of subsection (d) of
44 section one hundred five of the internal revenue code as such provisions
45 were in effect immediately prior to the repeal of such subsection, but
46 shall be attributed for city income tax purposes to the spouse who would
47 have been required to report any such amount as income if the spouses
48 had determined their federal income taxes separately.

49 (iii) Where a husband and wife file a joint city income tax return,
50 the twenty thousand dollar limitation provided in subparagraph (i) of
51 this paragraph shall be applied as if they were filing separate city
52 income tax returns.

53 (3-c) Social security benefits to the extent includible in gross
54 income for federal income tax purposes pursuant to section eighty-six of
55 the internal revenue code.

1 (4) The portion of any gain, from the sale or other disposition of
2 property having a higher adjusted basis for New York state income tax
3 purposes than for federal income tax purposes on the last day of the
4 last taxable year for which article sixteen of the tax law imposes tax,
5 that does not exceed such difference in basis.

6 (5) The amount necessary to prevent the taxation under this chapter
7 of any annuity or other amount of income or gain which was properly
8 included in income or gain and was taxable under article sixteen of the
9 tax law to the taxpayer, or to a decedent by reason of whose death the
10 taxpayer acquired the right to receive the income or gain, or to a trust
11 or estate from which the taxpayer received the income or gain.

12 (6) Interest or dividend income on obligations or securities to the
13 extent exempt from income tax under the laws of this state authorizing
14 the issuance of such obligations on securities but includible in gross
15 income for federal income tax purposes.

16 (7) The amount of any refund or credit for overpayment of income
17 taxes imposed by this city, any other taxing jurisdiction, or any taxes
18 imposed by article twenty-three of the tax law to the extent properly
19 included in gross income for federal income tax purposes.

20 (8) Compensation received for active service in the armed forces of
21 the United States on or after October first, nineteen hundred sixty-one,
22 and prior to September first, nineteen hundred sixty-two; provided,
23 however, that the amount of such compensation to be deducted shall not
24 exceed one hundred dollars for each month of the taxable year, subse-
25 quent to September, nineteen hundred sixty-one, during any part of which
26 month the taxpayer was engaged in such service. For the purposes of
27 this paragraph, the words "active service in the armed forces of the
28 United States" shall mean active duty, other than for training, in the
29 army, navy, including the marine corps, air force or coast guard of the
30 United States as defined in title ten of the United States Code.

31 (8-a) Compensation and bonuses received for active service in the
32 armed forces of the United States while a prisoner of war or missing in
33 action during the hostilities in Vietnam, to the extent includible in
34 gross income for federal income tax purposes.

35 (9) Interest on indebtedness incurred or continued to purchase or
36 carry obligations or securities the interest on which is subject to tax
37 under this chapter but exempt from federal income tax, to the extent
38 that such interest on indebtedness is not deductible in determining
39 federal adjusted gross income and is attributable to a trade or business
40 carried on by the taxpayer.

41 (10) Ordinary and necessary expenses paid or incurred during the
42 taxable year for: (i) the production or collection of income which is
43 subject to tax under this chapter but exempt from federal income tax, or
44 (ii) the management, conservation or maintenance of property held for
45 the production of such income, and the amortizable bond premium for the
46 taxable year on any bond the interest on which is subject to tax under
47 this chapter but exempt from federal income tax, to the extent that such
48 expenses and premiums are not deductible in determining federal adjusted
49 gross income and are attributable to a trade or business carried on by
50 the taxpayer.

51 (11) In the case of a taxpayer who has exercised the election permit-
52 ted by subdivision (g) or (h) of this section, the amount or amounts
53 required by said subdivisions to be subtracted from federal adjusted
54 gross income.

1 (12) The amount necessary to prevent the taxation of amounts properly
2 included in New York adjusted gross income in prior taxable years in
3 accordance with paragraph seven of subdivision (b) of this section.

4 (13) The amount required to be subtracted from federal adjusted gross
5 income pursuant to subdivision (i) of this section.

6 (14) The amount that may be subtracted from federal adjusted gross
7 income pursuant to subdivision (j) of this section.

8 (15) That portion of wages or salaries paid or incurred for the taxa-
9 ble year for which a deduction is not allowed pursuant to the provisions
10 of section two hundred eighty-C of the internal revenue code.

11 (19) The amount which may be subtracted from federal adjusted gross
12 income pursuant to subdivision (r) of this section.

13 (20) The amounts which may be subtracted from federal adjusted gross
14 income pursuant to subdivision (o) of this section.

15 (21) In relation to the disposition of stock or indebtedness of a
16 corporation which elected under subchapter s of chapter one of the
17 internal revenue code for any taxable year of such corporation begin-
18 ning, in the case of a corporation taxable under article nine-A of the
19 tax law, after December thirty-first, nineteen hundred eighty, the
20 amounts required to be subtracted from federal adjusted gross income
21 pursuant to subdivision (n) of this section.

22 (22) In the case of a shareholder of an S corporation: (A) where the
23 election provided for in subsection (a) of section six hundred sixty of
24 the tax law has not been made with respect to such corporation, any item
25 of income of the corporation included in federal gross income pursuant
26 to section thirteen hundred sixty-six of the internal revenue code, and

27 (B) in the case of a New York S termination year, subparagraph (A) of
28 this paragraph shall apply to the amounts of income determined under
29 subdivision (s) of this section.

30 (23) The amounts which may be subtracted from federal adjusted gross
31 income pursuant to subdivision (p) of this section.

32 (24) For taxable years beginning after December thirty-first, nineteen
33 hundred eighty-one, except with respect to property which is a qualified
34 mass commuting vehicle described in subparagraph (D) of paragraph eight
35 of subsection (f) of section one hundred sixty-eight of the internal
36 revenue code, relating to qualified mass commuting vehicles, any amount
37 which is included in the taxpayer's federal adjusted gross income solely
38 as a result of an election made pursuant to the provisions of such para-
39 graph eight as it was in effect for agreements entered into prior to
40 January first, nineteen hundred eighty-four;

41 (25) For taxable years beginning after December thirty-first, nineteen
42 hundred eighty-one, except with respect to property which is a qualified
43 mass commuting vehicle described in subparagraph (D) of paragraph eight
44 of subsection (f) of section one hundred sixty-eight of the internal
45 revenue code, relating to qualified mass commuting vehicles, any amount
46 which the taxpayer could have excluded from federal adjusted gross
47 income had it not made the election provided for in such paragraph eight
48 as it was in effect for agreements entered into prior to January first,
49 nineteen hundred eighty-four;

50 (26) For taxable years beginning after December thirty-first, nineteen
51 hundred eighty-one, except with respect to recovery property subject to
52 the provisions of section two hundred eighty-F of the internal revenue
53 code and recovery property placed in service in this state in taxable
54 years beginning after December thirty-first, nineteen hundred eighty-
55 four, the amount allowable as the depreciation deduction under section
56 one hundred sixty-seven of the internal revenue code as such section

1 would have applied to property placed in service on December thirty-
2 first, nineteen hundred eighty;

3 (26) In the case of property placed in service in taxable years begin-
4 ning before nineteen hundred ninety-four, for taxable years beginning
5 after December thirty-first, nineteen hundred eighty-one, except with
6 respect to property subject to the provisions of section two hundred
7 eighty-F of the internal revenue code and property subject to the
8 provisions of section one hundred sixty-eight of the internal revenue
9 code which is placed in service in this state in taxable years beginning
10 after December thirty-first, nineteen hundred eighty-four, an amount
11 with respect to property which is subject to the provisions of section
12 one hundred sixty-eight of the internal revenue code equal to the amount
13 allowable as the depreciation deduction under section one hundred
14 sixty-seven of the internal revenue code as such section would have
15 applied to property placed in service on December thirty-first, nineteen
16 hundred eighty.

17 (28) Upon the disposition of recovery property to which paragraph
18 twenty-six of this subdivision applies, the amount, if any, by which the
19 aggregate of the modifications described in paragraph twenty-five of
20 subdivision (b) of this section attributable to such property exceeds
21 the aggregate of the modifications described in paragraph twenty-six of
22 this subdivision attributable to such property.

23 (28) Upon the disposition of property to which paragraph twenty-six of
24 this subdivision applies, the amount, if any, by which the aggregate of
25 the modifications described in paragraph twenty-five of subdivision (b)
26 of this section attributable to such property exceeds the aggregate of
27 the modifications described in paragraph twenty-six of this subdivision
28 attributable to such property.

29 (29) Deduction for two-earner married couples. (A) For the taxable
30 year beginning in nineteen hundred eighty-seven, in the case of a
31 husband and wife who each have qualified earned income and who have
32 filed a joint return under subdivision (b) of section 11-1751 of this
33 chapter for the taxable year, an amount equal to ten percent of the
34 lesser of:

35 (i) thirty thousand dollars or

36 (ii) the qualified earned income of the spouse with the lower quali-
37 fied earned income for such taxable year.

38 (B) For purposes of this paragraph, eligibility for the deduction
39 provided for herein and the term qualified earned income shall be deter-
40 mined in the manner such eligibility and such qualified earned income
41 would have been determined pursuant to the provisions of section two
42 hundred twenty-one of the internal revenue code of nineteen hundred
43 fifty-four had such provisions continued in effect for taxable years
44 commencing after December thirty-first, nineteen hundred eighty-six as
45 they were in effect immediately prior to the repeal of such section.
46 Provided, however, the determination of such qualified earned income
47 shall be made with regard only to the items therein included in city
48 adjusted gross income, with such adjusted gross income determined with-
49 out regard to this paragraph, and only with regard to the deductions and
50 exclusions which are of the type properly allowable to or chargeable
51 against such qualified earned income in such taxable year.

52 (30) The amount received by any person as an accelerated payment or
53 payments of part or all of the death benefit or special surrender value
54 under a life insurance policy as a result of any of the diagnoses speci-
55 fied in subparagraph (A) or (B) of paragraph one of subsection (a) of
56 section one thousand one hundred thirteen of the insurance law, and the

1 amount received by any person as a viatical settlement pursuant to the
2 provisions of article seventy-eight of the insurance law, to the extent
3 includible in gross income for federal income tax purposes.

4 (32) The portion of the fees paid during the taxable year by a taxpay-
5 er who is a resident of a continuing care retirement community, issued a
6 certificate of authority pursuant to article forty-six of the public
7 health law, attributable to the cost of providing long term care bene-
8 fits pursuant to a continuing care contract. The portion of the fees so
9 attributable shall be determined in accordance with regulations promul-
10 gated by the superintendent of insurance. The deduction may not exceed
11 the limitation that would be applicable to the taxpayer for the taxable
12 year, with respect to eligible long term care premiums, determined under
13 paragraph ten of subsection (d) of section two hundred thirteen of the
14 internal revenue code.

15 (33) Distributions, to the extent includible in adjusted gross income
16 for federal income tax purposes, made to the taxpayer because of his or
17 her status as a victim of Nazi persecution, as defined in P.L. 103-286,
18 or as a spouse or a descendant in need of such victim.

19 (34) Items of income, to the extent includible in gross income for
20 federal income tax purposes, attributable to, derived from or in any way
21 related to assets stolen from, hidden from or otherwise lost to a victim
22 of Nazi persecution, as defined in P.L. 103-286, immediately prior to,
23 during and immediately after World War II, including, but not limited to
24 interest on the proceeds receivable as insurance under policies issued
25 to a victim of Nazi persecution, as defined in P.L. 103-286, by European
26 insurance companies immediately prior to and during World War II.

27 Provided, however, this subtraction from federal adjusted income does
28 not apply to assets acquired with such assets or with the proceeds from
29 the sale of such assets. Provided, further, this paragraph is only
30 applicable to a taxpayer who was the first recipient of such assets
31 after their recovery and who is a victim of Nazi persecution, as defined
32 in P.L. 103-286, or a spouse or a descendant of such victim.

33 (35) As provided in section thirty-eight of the tax law, any income or
34 gain, to the extent it is included in federal adjusted gross income of
35 an individual who is the sole proprietor of a qualified entity or a
36 member of a limited liability company, a partner in a partnership or a
37 shareholder in a New York subchapter S corporation that is a qualified
38 entity as defined in section sixteen-v of the New York state urban
39 development corporation act attributable to the operations of such qual-
40 ified entity at its location in or as part of a New York state inno-
41 vation hot spot, as defined in paragraph (a) of subdivision one of
42 section sixteen-v of the New York state urban development corporation
43 act.

44 (36) (A) In the case of a taxpayer who is a small business or a
45 taxpayer who is a member, partner, or shareholder of a limited liability
46 company, partnership, or New York S corporation, respectively, that is a
47 small business, who or which has business income and/or farm income as
48 defined in the laws of the United States, an amount equal to fifteen
49 percent of the net items of income, gain, loss and deduction attribut-
50 able to such business or farm entering into federal adjusted gross
51 income, but not less than zero.

52 (B) (i) For the purposes of this paragraph, the term small business
53 shall mean: (I) a sole proprietor who employs one or more persons during
54 the taxable year and who has net business income or net farm income of
55 greater than zero but less than two hundred fifty thousand dollars;

1 (II) a limited liability company, partnership, or New York S corpo-
2 ration that during the taxable year employs one or more persons and has
3 net farm income that is greater than zero but less than two hundred
4 fifty thousand dollars; or

5 (III) a limited liability company, partnership, or New York S corpo-
6 ration that during the taxable year employs one or more persons and has
7 New York gross business income attributable to a non-farm business that
8 is greater than zero but less than one million five hundred thousand
9 dollars.

10 (ii) For purposes of this paragraph, the term New York gross business
11 income shall mean: (I) in the case of a limited liability company or a
12 partnership, New York source gross income as defined in subparagraph (b)
13 or paragraph three of subsection (c) of section six hundred fifty-eight
14 of the tax law, and, (II) in the case of a New York S corporation, New
15 York receipts included in the numerator of the apportionment factor
16 determined under section two hundred ten-A of the tax law for the taxa-
17 ble year.

18 (C) To qualify for this modification in relation to a non-farm small
19 business that is a limited liability company, partnership, or New York S
20 corporation, the taxpayer's income attributable to the net business
21 income from its ownership interests in non-farm limited liability compa-
22 nies, partnerships, or New York S corporations must be less than two
23 hundred fifty thousand dollars.

24 (37) Any wages received by an individual as an employee of a business
25 located within a tax-free NY area during the first five years of such
26 business's ten year taxable period specified in subdivision (a) of
27 section thirty-nine of the tax law to the extent included in federal
28 adjusted gross income and allowed under section thirty-nine of the tax
29 law. During the second five years of such business's ten year taxable
30 period, the first two hundred thousand dollars of such wages in the case
31 of a taxpayer filing as a single individual, the first two hundred fifty
32 thousand dollars of such wages in the case of a taxpayer filing as a
33 head of household, and three hundred thousand dollars of such wages in
34 the case of a taxpayer filing a joint return, to the extent included in
35 federal adjusted gross income and allowed under section thirty-nine of
36 the tax law.

37 (38) The amount of any award paid to a volunteer firefighter or volun-
38 teer ambulance worker from a length of service defined contribution plan
39 or defined benefit plan as provided for in articles eleven-A, eleven-AA,
40 eleven-AAA and eleven-AAAA of the general municipal law, to the extent
41 that such award is includable in gross income for federal income tax
42 purposes; provided, however, that such award is not distributed in the
43 form of a lump sum distribution, as defined in subparagraph (D) of para-
44 graph four of subsection (e) of section four hundred two of the internal
45 revenue code and taxed under section six hundred three of the tax law;
46 and provided, further, that such award is not distributed to a taxpayer
47 who has not attained the age of fifty-nine and one-half years.

48 (39) The amount of any gain added back to federal adjusted gross
49 income in a previous taxable year pursuant to paragraph thirty-nine of
50 subdivision (b) of this section that is included in federal gross income
51 for the taxable year.

52 (d) Modification for city fiduciary adjustment. There shall be added
53 to or subtracted from federal adjusted gross income, as the case may be,
54 the taxpayer's share, as beneficiary of an estate or trust, of the city
55 fiduciary adjustment determined under section 11-1719 of this subchap-
56 ter.

1 (e) Modifications of partners and shareholders of S corporations. (1)
2 Partners and shareholders of S corporations which are not New York C
3 corporations. The amounts of modifications required to be made under
4 this section by a partner or by a shareholder of an S corporation, other
5 than an S corporation which is a New York C corporation, which relate to
6 partnership or S corporation items of income, gain, loss or deduction
7 shall be determined under section 11-1717 of this subchapter and, in the
8 case of a partner of a partnership doing an insurance business as
9 members of the New York insurance exchange described in section six
10 thousand two hundred one of the insurance law, under section 11-1717.1
11 of this subchapter.

12 (2) Shareholders of S corporations which are New York C corporations.
13 In the case of a shareholder of an S corporation which is a New York C
14 corporation, the modifications under this section which relate to the
15 corporation's items of income, loss and deduction shall not apply,
16 except for the modifications provided under paragraph nineteen of subdi-
17 vision (b) and paragraph twenty-two of subdivision (c) of this section.

18 (3) New York S termination year. In the case of a New York S termi-
19 nation year, the amounts of the modifications required under this
20 section which relate to the S corporation's items of income, loss,
21 deduction and reductions for taxes, as described in paragraphs two and
22 three of subsection (f) of section thirteen hundred sixty-six of the
23 internal revenue code, shall be adjusted in the same manner that the S
24 corporation's items are adjusted under subdivision (s) of this section.

25 (f) Husband and wife. If husband and wife determine their federal
26 income tax on a joint return but are required to determine their city
27 income taxes separately, they shall determine their city adjusted gross
28 incomes separately as if their federal adjusted gross incomes had been
29 determined separately.

30 (g) Optional modifications. Subject to the conditions provided in
31 paragraphs three and four of this subdivision, at the election of the
32 taxpayer there shall also be subtracted from federal adjusted gross
33 income either or both of the items set forth in paragraphs one and two
34 of this subdivision, except that only one of such items shall be
35 subtracted with respect to any one item of property, and except that a
36 subtraction of the item set forth in such paragraph two may not be taken
37 with respect to taxable years commencing on or after January first,
38 nineteen hundred eighty-nine.

39 (1) Depreciation with respect to any property such as described in
40 paragraph three or four of this subdivision, and subject to the condi-
41 tions provided therein, not exceeding twice the depreciation allowed
42 with respect to the same property for federal income tax purposes. Such
43 modification shall be allowed only upon condition that any depreciation
44 or amortization allowed with respect to the same property in determining
45 federal adjusted gross income shall be added to federal adjusted gross
46 income pursuant to paragraph six of subdivision (b) of this section.
47 The total of all deductions allowed pursuant to this paragraph in any
48 taxable year or years with respect to any property described in para-
49 graph three of this subdivision shall not exceed its cost or other basis
50 and, with respect to property described in paragraph four of this subdi-
51 vision, which is used in a business carried on both within and without
52 the state shall not exceed its cost or other basis multiplied by a
53 percentage of the excess of the taxpayer's business income over its
54 business deductions allocated to this state for the first year such
55 depreciation is deducted. Such percentage shall be determined by appor-
56 tionment and allocation under regulations of the tax commission.

1 (2) Expenditures paid or incurred during the taxable year for the
2 construction, reconstruction, erection or acquisition of any property
3 such as described in paragraph three or four of this subdivision, and
4 subject to the conditions provided therein, which is used or to be used
5 for purposes of research and development in the experimental or labora-
6 tory sense. Such purposes shall not be deemed to include the ordinary
7 testing or inspection of materials or products for quality control,
8 efficiency surveys, management studies, consumer surveys, advertising,
9 promotions or research in connection with literary, historical or simi-
10 lar projects. Such modification shall be allowed only on condition
11 that, with respect to property described in paragraph four of this
12 subdivision, which is used in a business carried on both within and
13 without the state the deduction shall not exceed the expenditures multi-
14 plied by a percentage of the excess of the taxpayer's business income
15 over its business deductions allocated to this state for the first year
16 such expenditures are deducted. Such percentage shall be determined by
17 apportionment and allocation under regulations of the tax commission,
18 and for the taxable year and all succeeding taxable years, any
19 deductions allowed for federal income tax purposes on account of such
20 expenditures or on account of depreciation of the same property, except
21 to the extent that its basis may be attributable to factors other than
22 such expenditures, shall be added to federal adjusted gross income
23 pursuant to paragraph six of subdivision (b) of this section, or in case
24 a modification is allowable pursuant to this paragraph for only a part
25 of such expenditures, on condition that a proportionate part of any such
26 deductions allowed for federal income tax purposes be added to federal
27 adjusted gross income. With respect to property which is used or to be
28 used for research and development only in part, or during only part of
29 its useful life, the modification allowable pursuant to this paragraph
30 shall be limited to a proportionate part of the expenditures relating
31 thereto. If a modification shall have been allowed pursuant to this
32 paragraph for all or part of such expenditures with respect to any prop-
33 erty, and such property is used for purposes other than research and
34 development to a greater extent than originally reported, the taxpayer
35 shall report such use in his or her return for the first taxable year
36 during which it occurs, and the tax commission may recompute the tax for
37 the year or years for which such deduction was allowed, and may assess
38 any additional tax resulting from such recomputation within the time
39 fixed by subdivision (c) of section 11-1783 of this chapter.

40 (3) For purposes of this paragraph, such modifications shall be
41 allowed only with respect to tangible property which is depreciable
42 pursuant to section one hundred sixty-seven of the internal revenue
43 code, having a situs in this state and used in the taxpayer's trade or
44 business: (A) constructed, reconstructed or erected after December thir-
45 ty-first, nineteen hundred sixty-three, pursuant to a contract which
46 was, on or before December thirty-first, nineteen hundred sixty-seven,
47 and at all times thereafter, binding on the taxpayer or, property, the
48 physical construction, reconstruction or erection of which began on or
49 before December thirty-first, nineteen hundred sixty-seven or which
50 began after such date pursuant to an order placed on or before December
51 thirty-first, nineteen hundred sixty-seven, and then only with respect
52 to that portion of the basis thereof or the expenditures relating there-
53 to which is properly attributable to such construction, reconstruction
54 or erection after December thirty-first, nineteen hundred sixty-three,
55 or (B) acquired after December thirty-first, nineteen hundred sixty-
56 three, pursuant to a contract which was, on or before December thirty-

1 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
2 ing on the taxpayer or pursuant to an order placed on or before December
3 thirty-first, nineteen hundred sixty-seven, by purchase as defined in
4 subsection (d) of section one hundred seventy-nine of the internal
5 revenue code, if the original use of such property commenced with the
6 taxpayer, commenced in this state and commenced after December thirty-
7 first, nineteen hundred sixty-three, or (C) acquired, constructed,
8 reconstructed, or erected subsequent to December thirty-first, nineteen
9 hundred sixty-seven, if such acquisition, construction, reconstruction
10 or erection is pursuant to a plan of the taxpayer which was in existence
11 December thirty-first, nineteen hundred sixty-seven and not thereafter
12 substantially modified, and such acquisition, construction, recon-
13 struction or erection would qualify under the rules in paragraph four,
14 five or six of subdivision (h) of section forty-eight of the internal
15 revenue code provided all references in such paragraphs four, five and
16 six to the dates October nine, nineteen hundred sixty-six, and October
17 ten, nineteen hundred sixty-six, shall be read as December thirty-first,
18 nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction
19 under clause (A), (B) or (C) of this paragraph only if the tangible
20 property shall be delivered or the construction, reconstruction or
21 erection shall be completed on or before December thirty-first, nineteen
22 hundred sixty-nine, except in the case of tangible property which is
23 acquired, constructed, reconstructed or erected pursuant to a contract
24 which was, on or before December thirty-first, nineteen hundred sixty-
25 seven, and at all times thereafter, binding on the taxpayer. However,
26 for any taxable year beginning on or after January first, nineteen
27 hundred sixty-eight, a taxpayer shall not be allowed a modification
28 under paragraph one of this subdivision with respect to tangible
29 personal property leased to any other person or corporation, provided,
30 any contract or agreement to lease or rent or for a license to use such
31 property shall be considered a lease. With respect to property which a
32 taxpayer uses for purposes other than leasing for part of a taxable year
33 and leases for a part of a taxable year, a modification under paragraph
34 one of this subdivision shall be allowed in proportion to the part of
35 the year such property is used by the taxpayer.

36 (4) For purposes of this paragraph, such modifications shall be
37 allowed only with respect to tangible property which is depreciable
38 pursuant to section one hundred sixty-seven of the internal revenue
39 code, having a situs in this state and used in the taxpayer's trade or
40 business. The modifications provided for in paragraph one of this
41 subdivision shall be allowed only with respect to tangible property
42 which is: (A) constructed, reconstructed or erected after December thir-
43 ty-first, nineteen hundred sixty-seven, pursuant to a contract which
44 was, on or before December thirty-first, nineteen hundred sixty-eight,
45 and at all times thereafter, binding on the taxpayer or, property, the
46 physical construction, reconstruction or erection of which began on or
47 before December thirty-first, nineteen hundred sixty-eight or which
48 began after such date pursuant to an order placed on or before December
49 thirty-first, nineteen hundred sixty-eight, and then only with respect
50 to that portion of the basis thereof or the expenditures relating there-
51 to which is properly attributable to such construction, reconstruction
52 or erection after December thirty-first, nineteen hundred sixty-three,
53 or (B) acquired after December thirty-first, nineteen hundred sixty-sev-
54 en, pursuant to a contract which was, on or before December thirty-
55 first, nineteen hundred sixty-eight, and at all times thereafter, bind-
56 ing on the taxpayer or pursuant to an order placed on or before December

1 thirty-first, nineteen hundred sixty-eight, by purchase as defined in
2 section one hundred seventy-nine (d) of the internal revenue code, if
3 the original use of such property commenced with the taxpayer, commenced
4 in this state and commenced after December thirty-first, nineteen
5 hundred sixty-seven, or (C) acquired, constructed, reconstructed, or
6 erected subsequent to December thirty-first, nineteen hundred sixty-
7 eight, if such acquisition, construction, reconstruction or erection is
8 pursuant to a plan of the taxpayer which was in existence December thir-
9 ty-first, nineteen hundred sixty-eight, and not thereafter substantially
10 modified, and such acquisition, construction, reconstruction or erection
11 would qualify under the rules in paragraph four, five or six of subdivi-
12 sion (h) of section forty-eight of the internal revenue code provided
13 all references in such paragraphs four, five and six to the dates Octo-
14 ber nine, nineteen hundred sixty-six, and October ten, nineteen hundred
15 sixty-six, shall be read as December thirty-first, nineteen hundred
16 sixty-eight. A taxpayer shall be allowed a deduction under clause (A),
17 (B) or (C) of the preceding sentence of this paragraph only if the
18 tangible property shall be delivered or the construction, reconstruction
19 or erection shall be completed on or before December thirty-first, nine-
20 teen hundred seventy, except in the case of tangible property which is
21 acquired, constructed, reconstructed or erected pursuant to a contract
22 which was, on or before December thirty-first, nineteen hundred sixty-
23 eight, and at all times thereafter binding on the taxpayer. The modifi-
24 cation provided for in paragraph two of this subdivision shall be
25 allowed only with respect to tangible property: (A) the construction,
26 reconstruction or erection of which is completed after December thirty-
27 first, nineteen hundred sixty-seven, and then only with respect to that
28 portion of the basis thereof or the expenditures relating thereto which
29 is properly attributable to such construction, reconstruction or
30 erection after December thirty-first, nineteen hundred sixty-three, or
31 (B) acquired after December thirty-first, nineteen hundred sixty-seven,
32 by purchase as defined in section one hundred seventy-nine (d) of the
33 internal revenue code, if the original use of such property commenced
34 with the taxpayer, commenced in this state and commenced after December
35 thirty-first, nineteen hundred sixty-three. Provided, however, a
36 modification under paragraph one of this subdivision shall be allowed
37 with respect to property described in this paragraph only on condition
38 that such property shall be principally used by the taxpayer in the
39 production of goods by manufacturing; processing; assembling; refining;
40 mining; extracting; farming; agriculture; horticulture; floriculture;
41 viticulture; or commercial fishing. Manufacturing shall mean the proc-
42 ess of working raw materials into wares suitable for use or which gives
43 new shapes, new qualities or new combinations to matter which already
44 has gone through some artificial process by the use of machinery, tools,
45 appliances and other similar equipment. Property used in the production
46 of goods shall include machinery, equipment or other tangible property
47 which is principally used in the repair and service of other machinery,
48 equipment or other tangible property used principally in the production
49 of goods and shall include all facilities used in the manufacturing
50 operation, including storage of material to be used in manufacturing and
51 of the products that are manufactured. At the option of the taxpayer,
52 air and water pollution control facilities which qualify for elective
53 deductions under subdivision (h) of this section may be treated, for
54 purposes of this paragraph, as tangible property principally used in the
55 production of goods by manufacturing; processing; assembling; refining;
56 mining; extracting; farming; agriculture; horticulture; floriculture;

1 viticulture; or commercial fishing, in which event, a deduction shall
2 not be allowed under such subdivision (h). However, for any taxable
3 year beginning on or after January first, nineteen hundred sixty-eight,
4 a taxpayer shall not be allowed a modification under paragraph one of
5 this subdivision with respect to tangible personal property leased to
6 any other person or corporation, provided, any contract or agreement to
7 lease or rent or for a license to use such property shall be considered
8 a lease. With respect to property which a taxpayer uses for purposes
9 other than leasing for part of a taxable year and leases for a part of a
10 taxable year, a modification under paragraph one of this subdivision
11 shall be allowed in proportion to the part of the year such property is
12 used by the taxpayer.

13 (5) If the modifications allowable for any taxable year pursuant to
14 this subdivision exceed the taxpayer's city adjusted gross income,
15 determined without the allowance of such modifications, the excess may
16 be carried over to the following taxable year or years and may be
17 subtracted from federal adjusted gross income for such year or years.

18 (6) In any taxable year when property is sold or otherwise disposed
19 of, with respect to which a modification has been allowed pursuant to
20 paragraph one or two of this subdivision, the basis of such property
21 shall be adjusted to reflect the modifications so allowed, and if the
22 basis as so adjusted is lower than the adjusted basis of the same prop-
23 erty for federal income tax purposes, there shall be added to federal
24 adjusted gross income the amount of the difference between such adjusted
25 bases.

26 (h) Optional modification for waste treatment facility expenditures.
27 For taxable years commencing prior to January first, nineteen hundred
28 eighty-nine, at the election of the taxpayer, there shall also be
29 subtracted from federal adjusted gross income expenditures paid or
30 incurred during the taxable year for the construction, reconstruction,
31 erection or improvement of industrial waste treatment facilities and air
32 pollution control facilities.

33 (1)(A) The term "industrial waste treatment facilities" shall mean
34 facilities for the treatment, neutralization, or stabilization of indus-
35 trial waste, as the term "industrial waste" is defined in section
36 17-0105 of the environmental conservation law, from a point immediately
37 preceding the point of such treatment, neutralization or stabilization
38 to the point of disposal, including the necessary pumping and transmit-
39 ting facilities, but excluding such facilities installed for the primary
40 purpose of salvaging materials which are usable in the manufacturing
41 process or are marketable.

42 (B) The term "air pollution control facilities" shall mean facilities
43 which remove, reduce, or render less noxious air contaminants emitted
44 from an air contamination source, as the terms "air contaminant" and
45 "air contamination source" are defined in section 19-0107 of the envi-
46 ronmental conservation law, from a point immediately preceding the point
47 of such removal, reduction or rendering to the point of discharge of
48 air, meeting emission standards as established by the air pollution
49 control board, but excluding such facilities installed for the primary
50 purpose of salvaging materials which are usable in the manufacturing
51 process or are marketable and excluding those facilities which rely for
52 their efficacy on dilution, dispersion or assimilation of air contam-
53 inants in the ambient air after emission.

54 (2) Such modifications shall be allowed only:

55 (A) with respect to tangible property which is depreciable, pursuant
56 to section one hundred sixty-seven of the internal revenue code, having

1 a situs in this state and used in the taxpayer's trade or business, the
2 construction, reconstruction, erection or improvement of which, in the
3 case of industrial waste treatment facilities, is initiated on or after
4 January first, nineteen hundred sixty-five, or which, in the case of air
5 pollution control facilities, is initiated on or after January first,
6 nineteen hundred sixty-six, and

7 (B) on condition that such facilities have been certified by the
8 commissioner of environmental conservation or his or her designated
9 representative, in the same manner as provided for in section 17-0707 or
10 19-0309 of the environmental conservation law, as applicable, as comply-
11 ing with the provisions of such environmental conservation law, the
12 state sanitary code and regulations, permits or orders promulgated
13 pursuant thereto, and

14 (C) on condition that for the taxable year and all succeeding taxable
15 years, any deductions allowed for federal income tax purposes for such
16 expenditures or for depreciation or amortization of the same property,
17 except to the extent that its basis may be attributable to factors other
18 than such expenditures, be added to federal adjusted gross income pursu-
19 ant to paragraph five of subdivision (b) of this section, or in case a
20 modification is allowable pursuant to this paragraph for only a part of
21 such expenditures, on condition that a proportionate amount of any such
22 deductions allowed for federal income tax purposes be added to federal
23 adjusted gross income, and

24 (D) where the election provided for in subdivision (g) of this
25 section has not been exercised in respect to the same property.

26 (3)(A) If expenditures in respect to an industrial waste treatment
27 facility or an air pollution control facility have been allowed as a
28 modification as provided herein and if within ten years from the end of
29 the taxable year in which such modification was allowed such property or
30 any part thereof is used for the primary purpose of salvaging materials
31 which are usable in the manufacturing process or are marketable, the
32 taxpayer shall report such change of use in its return for the first
33 taxable year during which it occurs, and the tax commission may recom-
34 pute the tax for the year or years for which such modification was
35 allowed, and may assess any additional tax resulting from such recompu-
36 tation within the time fixed by paragraph eight of subdivision (c) of
37 section 11-1783 of this chapter.

38 (B) If a modification is allowed as herein provided for expenditures
39 paid or incurred during any taxable year on the basis of a temporary
40 certificate of compliance issued pursuant to the environmental conserva-
41 tion law, and if the taxpayer fails to obtain a permanent certificate of
42 compliance upon completion of the facilities with respect to which such
43 temporary certificate was issued, the taxpayer shall report such failure
44 in its report for the taxable year during which such facilities are
45 completed, and the tax commission may recompute the tax for the year or
46 years for which such modification was allowed, and may assess any addi-
47 tional tax resulting from such recomputation within the time fixed by
48 paragraph eight of subdivision (c) of section 11-1783 of this chapter.

49 (C) If a modification is allowed as herein provided for expenditures
50 paid or incurred during any taxable year in respect to an air pollution
51 control facility on the basis of a certificate of compliance issued
52 pursuant to the environmental conservation law and the certificate is
53 revoked pursuant to section 19-0309 of the environmental conservation
54 law, the tax commission may recompute the tax for the year or years for
55 which the facility is not or was not in compliance with the applicable
56 provisions of the environmental conservation law, the state sanitary

1 code or codes, rules, regulations, permits or orders issued pursuant
 2 thereto, and for which a modification was allowed, and may assess any
 3 additional tax resulting from such recomputation within the time fixed
 4 by paragraph eight of subdivision (c) of section 11-1783 of this chap-
 5 ter.

6 (4) In any taxable year when property is sold or otherwise disposed
 7 of, with respect to which a modification has been allowed pursuant to
 8 this paragraph, such modification shall be disregarded in computing gain
 9 or loss, and the gain or loss on the sale or other disposition of such
 10 property shall be the gain or loss entering into the computation of
 11 federal adjusted gross income for such taxable year.

12 (i) In the case of mines, oil and gas wells and other natural depos-
 13 its, any allowance for percentage depletion pursuant to section six
 14 hundred thirteen or section six hundred thirteen-A of the internal
 15 revenue code, shall be added to federal adjusted gross income. However,
 16 with respect to the property as to which such addition to federal
 17 adjusted gross income is required, an allowance for depletion shall be
 18 subtracted from federal adjusted gross income in the amount that would
 19 be deductible under section six hundred eleven of such code if the
 20 deduction for an allowance for depletion were computed without reference
 21 to such section six hundred thirteen or section six hundred thirteen-A.
 22 With respect to the computation of depletion pursuant to this subdivi-
 23 sion, the basis for such computation shall be the basis for state income
 24 tax purposes provided for in subsection (i) of section six hundred
 25 twelve of the tax law. The portion of any gain from the sale or other
 26 disposition of such property having a higher adjusted basis for city
 27 income tax purposes than for federal income tax purposes, that does not
 28 exceed such difference in basis, shall be subtracted from federal
 29 adjusted gross income.

30 (j) Modification for nonpublic school tuition. (1) General. An indi-
 31 vidual shall be entitled to subtract from his or her federal adjusted
 32 gross income an amount shown in the table set forth in this paragraph
 33 for his or her city adjusted gross income for the taxable year, computed
 34 without the benefit of this modification, multiplied by the number of
 35 his or her dependents, not exceeding three, attending a nonpublic school
 36 on a full-time basis for at least four months during the regular school
 37 year for the education of such dependent in grades one through twelve,
 38 provided such individual is allowed an exemption under section 11-1716
 39 of this chapter for such dependent. Provided, further, that the modifi-
 40 cation under this paragraph may be taken only if such individual has
 41 paid at least fifty dollars for each such dependent in tuition to such
 42 nonpublic school for such education of such dependent. No taxpayer
 43 shall be entitled to the modification provided for in this paragraph if
 44 he or she claims a tuition reimbursement payment pursuant to article
 45 twelve-A of the education law.

46	If city adjusted	The amount allowable
47	gross income is:	for each dependent is:
48	Less than \$9,000	\$1,000
49	9,000 -- 10,999	850
50	11,000 -- 12,999	700
51	13,000 -- 14,999	550
52	15,000 -- 16,999	400
53	17,000 -- 18,999	250
54	19,000 -- 20,999	150
55	21,000 -- 22,999	125

1	23,000 -- 24,999	100
2	25,000 and over	-0-

3 (2) Husband and wife. In determining the applicable city adjusted
4 gross income of a husband and wife for purposes of the table set forth
5 in paragraph one of this subdivision, the city adjusted gross income of
6 a husband and wife shall be the aggregate of their city adjusted gross
7 incomes for the taxable year, determined without the benefit of the
8 modification provided for in this subdivision, and the number of depen-
9 dents with respect to which this modification may be claimed shall be no
10 more than three in the aggregate.

11 (3) Definitions. (A) "Tuition", as used in this subdivision, shall
12 mean the amount actually paid during the taxable year by the taxpayer
13 for the enrollment of a dependent during the regular school year at a
14 nonpublic school.

15 (B) "Nonpublic school", as used in this subdivision, shall mean any
16 non-profit elementary or secondary school in the state of New York,
17 other than a public school, which: (i) is providing instruction in
18 accordance with article seventeen and section thirty-two hundred four of
19 the education law, (ii) has not been found to be in violation of title
20 VI of the civil rights act of nineteen hundred sixty-four, 78 Stat. 252,
21 42 U.S.C. § 2000(d) and (iii) which is entitled to a tax exemption under
22 sections five hundred one (a) and five hundred one (c) (3) of the feder-
23 al internal revenue code of nineteen hundred fifty-four, as amended.
24 The commissioner of education shall furnish to the tax commission by
25 February first of each year, a certified list of nonpublic schools which
26 comply with clause (i) of this subparagraph for the preceding calendar
27 year and shall provide such other assistance with respect to whether
28 nonpublic schools come within clause (i) as the tax commission may
29 require.

30 (C) "Regular school year", as used in this subdivision, shall mean the
31 months of the taxable year exclusive of July and August.

32 (4) Additional information. Any claim for a modification under this
33 subdivision shall be accompanied by such information as the tax commis-
34 sion may require.

35 (k) Modification for contributions to a qualified higher education
36 fund. (1) A taxpayer may subtract from his or her federal adjusted
37 gross income amounts which during the taxable year are contributed by
38 him or her to a qualified higher education fund, as defined in paragraph
39 three of this subdivision, established by him or her, limited to the
40 product of seven hundred fifty dollars and the number of eligible bene-
41 ficiaries, as defined in subparagraph (C) of paragraph three of this
42 subdivision, as of the first or last day of the taxable year, whichever
43 yields the higher limit. Provided, however, that a taxpayer whose taxa-
44 ble year began on January first, nineteen hundred seventy-eight may
45 subtract from his or her federal adjusted gross income for such taxable
46 year, amounts contributed by him or her to a qualified higher education
47 fund during the fifteen month period beginning January first, nineteen
48 hundred seventy-eight and ending April fifteenth, nineteen hundred
49 seventy-nine. Contributions to a qualified higher education fund made
50 during the period beginning January first, nineteen hundred seventy-nine
51 and ending April fifteenth, nineteen hundred seventy-nine and subtracted
52 from a taxpayer's federal adjusted gross income for the taxable year
53 beginning January first, nineteen hundred seventy-eight shall be deemed
54 to have been made during such taxable year. However, such number of
55 eligible beneficiaries shall not include any individual who was a

1 student at an institution of higher education during the previous tax-
2 ble year. For purposes of this paragraph, the term "student" shall have
3 the same meaning as that ascribed to it by paragraph four of subsection
4 (e) of section one hundred fifty-one of the internal revenue code,
5 except that the reference therein to "5 calendar months" shall be deemed
6 to be a reference to "3 calendar months."

7 (2) A taxpayer who establishes a qualified higher education fund may
8 subtract from his or her federal adjusted gross income amounts included
9 in gross income for federal income tax purposes by reason of any income
10 realized by the fund or because of any payment by the fund to, or on
11 behalf of, an eligible beneficiary for the purpose specified in clause
12 (i) of subparagraph (A) of paragraph three of this subdivision.

13 (3) For purposes of this subdivision, a qualified higher education
14 fund is a fund established pursuant to a written plan described in
15 subparagraph (A) of this paragraph, but only if the fund meets the
16 requirements of subparagraph (B) of this paragraph.

17 (A) For purposes of this subdivision a "plan" means a plan estab-
18 lished:

19 (i) solely for the purpose of defraying costs associated with attend-
20 ance subsequent to graduation or separation from secondary school at an
21 institution of higher education, as defined in subparagraph (F) of this
22 paragraph, of one or more eligible beneficiaries, as defined in subpara-
23 graph (C) of this paragraph, such costs to include: (I) applicable
24 tuition and fees, exclusive of fees levied as a penalty for laboratory
25 breakage, dormitory damage and similar fees, (II) room and board as
26 charged by the institution pursuant to a contract entered into by the
27 institution and a student or, if no such contract is entered into, an
28 amount not exceeding one thousand five hundred dollars per year, which
29 amount shall include any expenses of transportation, and (III) books,
30 supplies and equipment,

31 (ii) which provides that no distribution shall be made by the fund,
32 except upon termination thereof, other than to, or on behalf of, eligi-
33 ble beneficiaries for the purpose specified in clause (i) of this
34 subparagraph,

35 (iii) which provides that upon termination of the fund all assets of
36 the fund shall be distributed to the creator of the fund, to his or her
37 estate or to a trust established for the purpose of making contributions
38 to the fund, and

39 (iv) which prohibits contributions to the fund in excess of amounts
40 which may be subtracted from federal adjusted gross income under para-
41 graph one of this subdivision.

42 (B) A fund meets the requirements of this subparagraph only if:

43 (i) it constitutes a custodial account, the assets of which are held
44 by a bank, as defined in paragraph one of subsection (d) of section four
45 hundred one of the internal revenue code, an insurance company qualified
46 to do business in this state, or another person who demonstrates, to the
47 satisfaction of the tax commission, that the manner in which he or she
48 will hold the assets will be consistent with the requirements of this
49 subdivision, or

50 (ii) it is a trust.

51 In the case of a trust referred to in clause (ii) of this subpara-
52 graph, the assets may be held by a bank or other person who demonstrates
53 to the satisfaction of the tax commission that the manner in which he or
54 she will administer the trust will be consistent with the requirements
55 of this subdivision. Such a trust shall not be disqualified under this
56 subparagraph merely because a person other than the trustee so adminis-

1 tering the trust may be granted, under the trust instrument, the power
2 to control the investment of the trust funds either by directing invest-
3 ments, including reinvestments, disposals and exchanges, or by disap-
4 proving proposed investments, including reinvestments, disposals and
5 exchanges. Such a trust may use annuity, endowment or life insurance
6 contracts of a life insurance company exclusively as the funding media
7 of the trust, if so provided by regulations of the state tax commis-
8 sion, and if the life insurance company supplies annually such informa-
9 tion about trust transactions as the tax commission shall by regulations
10 prescribe. For purposes of this subdivision, the term "bank" shall have
11 the same meaning ascribed to it by the last sentence of paragraph one of
12 subsection (d) of section four hundred one of the internal revenue code.

13 (C) For purposes of this subdivision, the term "eligible beneficiary"
14 means a person:

15 (i) having a relationship to the creator of the fund specified in
16 paragraphs one, two, three or six of subsection (a) of section one
17 hundred fifty-two of the internal revenue code,

18 (ii) who is a dependent of the creator of the fund pursuant to section
19 one hundred fifty-two of the internal revenue code, or is a member of
20 the armed forces of the United States on active duty, is a volunteer in
21 the peace corps, or is a full-time volunteer under the domestic volun-
22 teer service act of 1973, and

23 (iii) who either: (I) has not attained the age of twenty-one, except
24 that where his or her twenty-first birthday falls within a taxable year
25 with respect to which a modification based on contributions to a quali-
26 fied higher education fund with respect to which he or she is a benefi-
27 ciary is allowed to a taxpayer, for purposes of this subclause such
28 beneficiary shall be deemed not to have attained the age of twenty-one
29 until the day next succeeding the last day of such taxable year, or (II)
30 is a student, as defined in paragraph four of subsection (e) of section
31 one hundred fifty-one of the internal revenue code or, for a period of
32 up to four years, is a member of the armed forces of the United States
33 on active duty, is a volunteer in the peace corps, or is a full-time
34 volunteer under the domestic volunteer service act of 1973. Where the
35 determination of an individual's status as a student is required for a
36 purpose other than determining the permissibility of a modification
37 under this subdivision, an individual shall be deemed not to be a
38 student as of the last day of any calendar year during which he or she
39 fails to satisfy the requirements of subparagraphs (A) and (B) of para-
40 graph four of subsection (e) of section one hundred fifty-one of the
41 internal revenue code during each of five calendar months during such
42 calendar year.

43 (D) A person who meets the requirements of subparagraph (C) of this
44 paragraph shall cease to be an eligible beneficiary:

45 (i) if payments by the fund to him or her, or on his or her behalf,
46 for the purpose specified in clause (i) of subparagraph (A) of this
47 paragraph do not commence within five years after the date on which such
48 person was graduated or separated from secondary school, excluding any
49 period of up to four years during which an otherwise eligible benefi-
50 ciary was a member of the armed forces of the United States on active
51 duty, a volunteer in the peace corps, or in service as a full-time
52 volunteer under the domestic volunteer service act of 1973, or

53 (ii) after the expiration of ten years from the date of such gradu-
54 ation or separation, excluding any period of up to four years during
55 which an otherwise eligible beneficiary was a member of the armed forces
56 of the United States on active duty, a volunteer in the peace corps, or

1 in service as a full-time volunteer under the domestic volunteer service
2 act of 1973, or

3 (iii) if within six months after either his or her eighteenth birthday
4 or the date on which such fund is established, whichever is later, he or
5 she does not file with the tax commission, on a form and in the manner
6 prescribed by regulation, a notice of consent relating to the tax treat-
7 ment of payments from a qualified higher education fund imposed under
8 paragraph fourteen of subdivision (b) of this section.

9 (E) Where a fund is continued subsequent to its creator's death, an
10 individual shall not cease to be an eligible beneficiary by reason of
11 failure to fulfill the requirement set forth in clause (ii) of subpara-
12 graph (C) of this paragraph.

13 (F) For purposes of this subdivision, the term "institution of higher
14 education" means an educational organization described in clause (ii) of
15 subparagraph (A) of paragraph one of subsection (b) of section one
16 hundred seventy of the internal revenue code,

17 (i) which provides an educational program for which it awards an asso-
18 ciate, baccalaureate or higher degree or provides a program which is
19 acceptable for full credit toward such a degree,

20 (ii) contributions to or for the use of which constitute charitable
21 contributions within the meaning of section one hundred seventy (c) of
22 the internal revenue code,

23 (iii) which is legally authorized to provide and does provide a
24 program of postsecondary education, and

25 (iv) which is accredited by a nationally recognized accrediting agency
26 or association listed by the United States commissioner of education.

27 (4) A qualified higher education fund shall terminate:

28 (A) if a contribution is made to the fund in excess of the amount
29 allowable as a subtraction from federal adjusted gross income under
30 paragraph one of this subdivision,

31 (B) if a distribution is made by the fund other than to, or on behalf
32 of, an eligible beneficiary for the purpose specified in clause (i) of
33 subparagraph (A) of paragraph three of this subdivision,

34 (C) if the plan ceases to have an eligible beneficiary, or

35 (D) in the absence of a testamentary disposition or inter vivos trust
36 provision to the contrary, upon the death of the creator of the fund, or

37 (E) if the fund is otherwise terminated under the tax law.

38 (5) The tax commission may by regulation require the filing of a
39 report annually by the creator of a qualified higher education fund or
40 other person designated by such regulation, such report to set forth the
41 amounts contributed to a qualified higher education fund, as well as the
42 amount, purpose and beneficiary of each disbursement made therefrom.
43 The tax commission may also by regulation require written notification
44 annually to each beneficiary of such disbursements made on his or her
45 behalf.

46 (6) The provisions of subparagraph (B) of paragraph four of this
47 subdivision shall not apply in the case of a rollover. A rollover occurs
48 where the creator of a qualified higher education fund withdraws all of
49 the assets of such fund and not later than sixty days subsequent to such
50 withdrawal establishes a new qualified higher education fund and depos-
51 its therein an amount equal to the value of the assets so withdrawn.
52 Such deposit shall not constitute a contribution within the meaning of
53 this subdivision. This paragraph shall not apply if at any time during
54 the one year period ending on the date of such withdrawal from the qual-
55 ified higher education fund the creator had made a similar withdrawal
56 from another qualified higher education fund, both such funds having at

1 least one beneficiary in common, where such prior withdrawal was
2 followed by the establishment of a new qualified higher education fund
3 such that a rollover was effected pursuant to the provisions of this
4 paragraph.

5 (1) Qualified higher education fund. (1) Upon termination of a
6 qualified higher education fund under subparagraph (A), (B) or (E) of
7 paragraph four of subdivision (k) of this section, a taxpayer to whom
8 the assets of the fund are required to be distributed pursuant to clause
9 (iii) of subparagraph (A) of paragraph three of subdivision (k) of this
10 section shall add to his or her federal adjusted gross income for the
11 taxable year during which the terminating event occurs an amount equal
12 to one hundred ten per centum of an amount which bears the same ratio to
13 the value of the assets of such fund immediately prior to termination as
14 the total contributions made to such fund by a city resident individual,
15 estate or trust bears to the total contributions made to such fund. For
16 purposes of this subdivision the value of the assets of the fund imme-
17 diately prior to termination shall include the value of any distrib-
18 utions made to or on behalf of an eligible beneficiary who subsequently
19 ceased to be an eligible beneficiary pursuant to clause (iii) of subpar-
20 agraph (D) of paragraph three of subdivision (k) of this section.

21 (2) Payments made to or on behalf of an eligible beneficiary from a
22 qualified higher education fund for the purpose specified in clause (i)
23 of subparagraph (A) of paragraph three of subdivision (k) of this
24 section shall be added to the federal adjusted gross income of the indi-
25 vidual taxpayer to whom or on whose behalf the payment is made, in
26 accordance with the following. For the first taxable year of such
27 taxpayer in which no payment described in this paragraph is made with
28 respect to him or her and during which such taxpayer is not a student,
29 as defined in paragraph four of subsection (e) of section one hundred
30 fifty-one of the internal revenue code, treating the terms "individual"
31 and "taxpayer" therein as referring to such taxpayer, or, for a period
32 of up to four years, a member of the armed forces of the United States
33 on active duty, a volunteer in the peace corps, or a full-time volunteer
34 under the domestic volunteer service act of 1973, which taxable year
35 commences after the last day of the first calendar year in which such a
36 payment is made, one-fifth of the aggregate of all such payments there-
37 tofore made, such aggregate amount pro-rated, pursuant to regulations
38 promulgated by the tax commission, according to the portion of the total
39 contributions made to the fund prior to the first day of such taxable
40 year which constitute amounts contributed by a city resident individual,
41 estate or trust, shall be added to the federal adjusted gross income of
42 such taxpayer for such taxable year and for each of the four succeeding
43 taxable years in which no such payment is made and in which such taxpay-
44 er is not a student, as defined above, or, for a period of up to four
45 years, a member of the armed forces of the United States on active duty,
46 a volunteer in the peace corps, or a full-time volunteer under the
47 domestic volunteer service act of 1973. If in a taxable year subsequent
48 to a taxable year in which such addition to federal adjusted gross
49 income is required, a payment described in this paragraph is made, one-
50 fifth of the amount of such payment, pro-rated, pursuant to regulations
51 promulgated by the tax commission, according to the portion of the total
52 contributions made to the fund prior to the first day of such taxable
53 year which constitute amounts contributed by a city resident individual,
54 estate or trust, shall be added to the federal adjusted gross income of
55 such taxpayer for each of the five immediately succeeding taxable years
56 in which no such payment is made and in which such taxpayer is not a

1 student, as defined above, or, for a period of up to four years, a
2 member of the armed forces of the United States on active duty, a volun-
3 teer in the peace corps, or a full-time volunteer under the domestic
4 volunteer service act of 1973.

5 (n) Where gain or loss is recognized for federal income tax purposes
6 upon the disposition of stock or indebtedness of a corporation electing
7 under subchapter s of chapter one of the internal revenue code:

8 (1) There shall be added to federal adjusted gross income the amount
9 of increase in basis with respect to such stock or indebtedness pursuant
10 to subsection (a) of section thirteen hundred seventy-six of the inter-
11 nal revenue code as such section was in effect for taxable years begin-
12 ning before January first, nineteen hundred eighty-three and subpara-
13 graphs (A) and (B) of paragraph one of subsection (a) of section
14 thirteen hundred sixty-seven of such code, for each taxable year of the
15 corporation beginning, in the case of a corporation taxable under arti-
16 cle nine-A of the tax law, after December thirty-first, nineteen hundred
17 eighty, for which the election provided for in subsection (a) of section
18 six hundred sixty of the tax law was not in effect, and

19 (2) There shall be subtracted from federal adjusted gross income:

20 (A) the amount of reduction in basis with respect to such stock or
21 indebtedness pursuant to subsection (b) of section thirteen hundred
22 seventy-six of the internal revenue code as such section was in effect
23 for taxable years beginning before January first, nineteen hundred
24 eighty-three and subparagraphs (B) and (C) of paragraph two of
25 subsection (a) of section thirteen hundred sixty-seven of such code, for
26 each taxable year of the corporation beginning, in the case of a corpo-
27 ration taxable under article nine-A of the tax law, after December thir-
28 ty-first, nineteen hundred eighty, for which the election provided for
29 in subsection (a) of section six hundred sixty of the tax law was not in
30 effect and

31 (B) the amount of any modifications to federal gross income with
32 respect to such stock pursuant to paragraph twenty-one of subdivision
33 (b) of this section.

34 (o) Modifications for new business investment gains and certain new
35 business investments.

36 1. For purposes of this subdivision, the following definitions shall
37 apply:

38 (A) "New business investment gain" means gain from the sale of a new
39 business investment issued to the taxpayer before January first, nine-
40 teen hundred eighty-eight, if:

41 (i) such new business investment is, in the hands of the person sell-
42 ing the same, whether or not the taxpayer, a capital asset as defined in
43 section twelve hundred twenty-one of the internal revenue code of nine-
44 teen hundred fifty-four, as amended, and

45 (ii) such new business investment was held by such person for the
46 period specified in paragraph two of this subdivision.

47 (B) "New business" means a corporation or partnership organized or
48 formed under the laws of any state which:

49 (i) adopts a plan on or after July first, nineteen hundred eighty-one
50 and before January first, nineteen hundred eighty-eight, to conduct a
51 new business within the meaning and intent of this section and to issue
52 new business investments, as defined in this subdivision, and

53 (ii) is, at the date of adoption of such plan, subject to taxation,
54 whether or not any amount is owing, under section one hundred eighty-
55 three or one hundred eighty-four of article nine of the tax law, or
56 under article nine-A of the tax law or article twenty-three of the tax

1 law, or would have been subject to tax under article twenty-three of
2 such law, as such article was in effect on January first, nineteen
3 hundred eighty, if such article were still in effect, and the first
4 taxable period for which such new business became subject to such taxa-
5 tion commenced on or after July first, nineteen hundred eighty-one and
6 before January first, nineteen hundred eighty-eight, and such first
7 taxable period includes the date of adoption of such plan; if not so
8 subject to taxation, the new business must be subject to taxation under
9 such sections or articles for the first time within one year from the
10 date of adoption of such plan, and

11 (iii) is conducted, or will be conducted, as evidenced by such plan,
12 whereby at least ninety percent of the assets, valued at original cost,
13 are located and employed in this state and eighty percent of the employ-
14 ees, in addition, in the case of a partnership, excluding partners, are
15 principally employed in this state during each taxable period, or part
16 thereof, as required by clause (iv) of this subparagraph, and

17 (iv) within ninety days after adoption of such plan, or, if a return
18 is required, as part of such return, under such article nine, article
19 nine-A or article twenty-three of the tax law, whichever is sooner,
20 shall file a new business certificate with the tax commission attesting
21 to whether it meets, if subject to taxation under such articles, or
22 intends to meet, if not so subject, all of the conditions stated in
23 clauses (i), (ii) and (iii) of this subparagraph within the time set
24 forth therein. Thereafter, during the first four taxable years of such
25 new business, along with, and as part of, any return required under such
26 articles, such new business shall make and file a new business certif-
27 icate for the period covered by such return attesting to whether it has
28 met the conditions specified in this subparagraph during the taxable
29 period covered by such return. If no return is required under such arti-
30 cles, such certificate shall be filed annually on or before the
31 fifteenth day of March which shall cover the twelve consecutive calendar
32 month period ending on the last day of December immediately preceding
33 such March fifteenth. If such new business fails to meet such conditions
34 specified in this subparagraph, it shall, in addition, give notice of
35 this fact, within the time prescribed by the tax commission, to the
36 holders of its "new business investments." The tax commission shall
37 prescribe the form and content of such new business certification and
38 may require a new business to file such certificate for periods, even if
39 no return is filed or required, but for this section, covering up to
40 eight years from the date of adoption of such plan, as in its
41 discretion, it deems the same necessary for the enforcement of this
42 section, and

43 (v) Special rules:

44 (1) For any taxable period, in order to constitute a new business, a
45 business enterprise must have derived more than sixty percent of its
46 aggregate gross receipts from sources other than royalties, rents, divi-
47 dends, interest, annuities and sales or exchanges of stock or securi-
48 ties.

49 (2) A new business does not include: (i) any new business of which
50 twenty-five percent or more of the number of shares of stock that enti-
51 tle the holders thereof to vote for the election of directors or trus-
52 tees is owned, directly or indirectly, by a taxpayer subject to tax
53 under section one hundred eighty-three, one hundred eighty-four, former
54 section one hundred eighty-five or former section one hundred eighty-six
55 of article nine of the tax law, or under article nine-A, or thirty-three
56 of the tax law or (ii) any new business substantially similar in opera-

tion and in ownership, directly or indirectly, to a business entity, or entities, taxable, or previously taxable, under such section, such article, article twenty-three of the tax law or which would have been subject to tax under such article twenty-three, as such article was in effect on January first, nineteen hundred eighty, or the income, or losses, of which is, or was, includible under article twenty-two of such tax law whereby the intent and purpose of this section would be evaded.

(C) "New business investment" means and includes the following investments issued before January first, nineteen hundred eighty-eight by a new business pursuant to a plan described in clause (i) of subparagraph (B) of this paragraph for money or other property, other than stock or securities, on or before the expiration of the third taxable year of such new business, excluding any short period immediately preceding such taxable year because the new business was not in existence for an entire taxable year, or forty-two months from the adoption of such plan, whichever is sooner: (i) original issuance capital stock as part of a new issue, (ii) other original issuance securities of a new issue of a like nature as stocks which are designed as a means of investment and issued for the purpose of financing corporate enterprises and providing for a distribution of rights in such enterprises, (iii) debt obligations such as bonds and debentures for a term of at least one year, whether secured or unsecured, and (iv) certificates and other instruments representing proprietary interests, whether limited or otherwise, in and assumption of general liabilities, whether limited or otherwise, of a partnership enterprise.

2. A taxpayer may subtract from his federal adjusted gross income a portion of an amount constituting a new business investment gain, as follows:

If new business investment held for:	The modification is equal to the following proportion of the gain includible in federal adjusted gross income:
At least four years, but less than five years	twenty-five percent
At least five years, but less than six years	fifty percent
At least six years	one hundred percent

3. Where, within six months of the realization of a new business investment gain allowable as the basis of a modification under paragraph two of this subdivision, such modification is equal to less than one hundred percent of the portion of the gain includible in federal adjusted gross income and the taxpayer purchases a new business investment which is then held for a period of at least six months, the taxpayer may subtract from his or her federal adjusted gross income ten percent, but not an amount that will reduce the portion of such gain included in his or her New York income below zero, of the amount of such gain where the purchase price of the new business investment is equal to or greater than the proceeds of the sale giving rise to such gain. Where the purchase price of the new business investment is less than an amount equal to the proceeds of such sale, the modification allowable under this paragraph shall be equal to ten percent of an amount equal to the product of: (A) the amount of the gain and (B) a fraction the numerator of which is the purchase price of the new investment and the denominator of which is an amount equal to the proceeds of such sale. The modification allowable under this paragraph may be utilized, at the option of the taxpayer, with respect to the taxable year in which the new business

1 investment gain is realized or the year containing the last day of the
2 six-month retention period described in this paragraph.

3 4. The tax commission may prescribe such rules and regulations as may
4 be necessary to carry out the purposes of this subdivision.

5 (p) New business investment deferral. For taxable years beginning
6 before January first, nineteen hundred eighty-eight, at the option of
7 the taxpayer, there may be subtracted from federal adjusted gross income
8 a reinvested amount of long-term capital gain realized in a taxable year
9 from the sale of a capital asset, as such term is defined in section
10 twelve hundred twenty-one of the internal revenue code, which is not a
11 new business investment. A reinvested amount of long-term capital gain
12 shall mean an amount which bears the same ratio to the long-term capital
13 gain realized from the sale of a capital asset which was includible in
14 New York adjusted gross income as that portion of the sale proceeds
15 which is reinvested, within one year from date of sale, in a New York
16 new business bears to the total sale proceeds. For the purposes of this
17 subdivision, a New York new business is a business enterprise which: (1)
18 has been a taxpayer under article nine-A, twenty-two, or thirty-three of
19 the tax law for no more than three taxable years, including short taxa-
20 ble years, (2) over fifty percent of the number of shares of stock that
21 entitle the holders thereof to vote for the election of directors or
22 trustees is not owned, directly or indirectly, by a taxpayer subject to
23 tax under section one hundred eighty-three, one hundred eighty-four or
24 one hundred eighty-five of article nine of the tax law, or under article
25 nine-A, thirty-two or thirty-three of the tax law, (3) is not substan-
26 tially similar in operation or ownership, directly or indirectly, to a
27 business entity, or entities taxable, or previously taxable, under such
28 sections, such articles, article twenty-three of the tax law or which
29 would have been subject to tax under article twenty-three, as such arti-
30 cle was in effect on January first, nineteen hundred eighty, or the
31 income, or losses, of which is, or was, includible under article twen-
32 ty-two of the tax law whereby the intent and purpose of this subdivision
33 would be evaded, (4) locates and employs at least ninety percent of its
34 assets in the state, (5) employs principally in the state eighty percent
35 of its employees, and (6) derives less than forty percent of its gross
36 income from dividends, interest, royalties, other than mineral, oil, or
37 gas royalties or copyright royalties, annuities and (7) reports at least
38 twenty-five hundred dollars in gross income in any taxable year. The
39 reinvested amount must qualify as a capital asset as defined pursuant to
40 section twelve hundred twenty-one of the internal revenue code and must
41 be retained by the taxpayer for at least twelve months. The modification
42 allowable under this subdivision shall be utilized with respect to the
43 taxable year in which the twelve month retention period ends.

44 (q) An amount deferred under subdivision (p) of this section shall be
45 added to federal adjusted gross income when the reinvestment in the New
46 York new business which qualified a taxpayer for such deferral is sold.

47 (r) In the case of a sale or other disposition of property acquired
48 from a decedent and valued by the executor of the estate of such dece-
49 dent for the purposes of the tax under article twenty-six of the tax law
50 pursuant to paragraph two of subsection (b) of section nine hundred
51 fifty-four of the tax law, where such estate was insufficient to require
52 the filing of a federal estate tax return, the amount necessary to prop-
53 erly reflect the gain or loss from such sale or other disposition which
54 would have been realized under this chapter, had, in the case of clause
55 (i) of this subdivision, a federal estate tax return been filed similar-
56 ly valuing such property pursuant to section two thousand thirty-two of

1 the internal revenue code, or in the case of clause (ii) of this subdivi-
2 vision, pursuant to section two thousand thirty-two-A of such code.

3 (s) New York S termination year. (1) General. In the case of a New
4 York S termination year, the amount of any item of S corporation income,
5 loss and deduction included in the shareholder's federal adjusted gross
6 income and any reductions for taxes, as described in paragraphs two and
7 three of subsection (f) of section thirteen hundred sixty-six of the
8 internal revenue code, shall be adjusted in accordance with the treat-
9 ment provided in paragraph two or three of this subdivision.

10 (2) Pro rata allocation. Unless paragraph three of this subdivision
11 applies, an equal portion of each S corporation item shall be assigned
12 to each day of the S corporation's taxable year for federal income tax
13 purposes. The portion of each such item thereby assigned to the S short
14 year shall be treated as an item of a New York S corporation, and the
15 portion of each such item thereby assigned to the C short year shall be
16 treated as an item of an S corporation which is a New York C corpo-
17 ration.

18 (3) Normal tax accounting. The portion of each S corporation item
19 assigned to the S short year and the C short year shall be determined
20 using normal tax accounting rules if:

21 (A) there is a sale or exchange of fifty percent or more of the stock
22 in such corporation during the New York S termination year or

23 (B) the corporation so elects, as provided in subparagraph (B) of
24 paragraph two of subsection (s) of section six hundred twelve of the tax
25 law.

26 (t) Related members expense add back. (1) Definitions. (A) Related
27 member. "Related member" means a related person as defined in subpara-
28 graph (c) of paragraph three of subsection (b) of section four hundred
29 sixty-five of the internal revenue code, except that "fifty percent"
30 shall be substituted for "ten percent".

31 (B) Effective rate of tax. "Effective rate of tax" means, as to any
32 city, the maximum statutory rate of tax imposed by the city on or meas-
33 ured by a related member's net income multiplied by the apportionment
34 percentage, if any, applicable to the related member under the laws of
35 said jurisdiction. For purposes of this definition, the effective rate
36 of tax as to any city is zero where the related member's net income tax
37 liability in said city is reported on a combined or consolidated return
38 including both the taxpayer and the related member where the reported
39 transactions between the taxpayer and the related member are eliminated
40 or offset. Also, for purposes of this definition, when computing the
41 effective rate of tax for a city in which a related member's net income
42 is eliminated or offset by a credit or similar adjustment that is
43 dependent upon the related member either maintaining or managing intan-
44 gible property or collecting interest income in that city, the maximum
45 statutory rate of tax imposed by said city shall be decreased to reflect
46 the statutory rate of tax that applies to the related member as effec-
47 tively reduced by such credit or similar adjustment.

48 (C) Royalty payments. Royalty payments are payments directly connected
49 to the acquisition, use, maintenance or management, ownership, sale,
50 exchange, or any other disposition of licenses, trademarks, copyrights,
51 trade names, trade dress, service marks, mask works, trade secrets,
52 patents and any other similar types of intangible assets as determined
53 by the state commissioner of taxation and finance, and include amounts
54 allowable as interest deductions under section one hundred sixty-three
55 of the internal revenue code to the extent such amounts are directly or
56 indirectly for, related to or in connection with the acquisition, use,

1 maintenance or management, ownership, sale, exchange or disposition of
2 such intangible assets.

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

11 (2) Royalty expense add backs. (A) For the purpose of computing city
12 adjusted gross income, a taxpayer must add back royalty payments direct-
13 ly or indirectly paid, accrued, or incurred in connection with one or
14 more direct or indirect transactions with one or more related members
15 during the taxable year to the extent deductible in calculating federal
16 taxable income.

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

29 (ii) The adjustment required in this subdivision shall not apply if
30 the taxpayer establishes, by clear and convincing evidence of the type
31 and in the form specified by the commissioner of finance, that: (I) the
32 related member was subject to tax on or measured by its net income in
33 this city or another city within the United States, or some combination
34 thereof; (II) the tax base for said tax included the royalty payment
35 paid, accrued or incurred by the taxpayer; and (III) the aggregate
36 effective rate of tax applied to the related member in those jurisdic-
37 tions is no less than eighty percent of the statutory rate of tax that
38 applied to the taxpayer under section 11-1701 of this chapter for the
39 taxable year.

40 (iii) The adjustment required in this subdivision shall not apply if
41 the taxpayer establishes, by clear and convincing evidence of the type
42 and in the form specified by the commissioner of finance, that: (I) the
43 royalty payment was paid, accrued or incurred to a related member organ-
44 ized under the laws of a country other than the United States; (II) the
45 related member's income from the transaction was subject to a comprehen-
46 sive income tax treaty between such country and the United States; (III)
47 the related member was subject to tax in a foreign nation on a tax base
48 that included the royalty payment paid, accrued or incurred by the
49 taxpayer; (IV) the related member's income from the transaction was
50 taxed in such country at an effective rate of tax at least equal to that
51 imposed by this city; and (V) the royalty payment was paid, accrued or
52 incurred pursuant to a transaction that was undertaken for a valid busi-
53 ness purpose and using terms that reflect an arm's length relationship.

54 (iv) The adjustment required in this subdivision shall not apply if
55 the taxpayer and the commissioner of finance agree in writing to the
56 application or use of alternative adjustments or computations. The

1 commissioner of finance may, in his or her discretion, agree to the
2 application or use of alternative adjustments or computations when he or
3 she concludes that in the absence of such agreement the income of the
4 taxpayer would not be properly reflected.

5 (u) Alimony modifications. (1) In the case of applicable alimony or
6 separate maintenance payments, the following modifications shall apply:

7 (A) There shall be subtracted from federal adjusted gross income any
8 applicable alimony or separate maintenance payments made by the taxpayer
9 during the taxable year.

10 (B) There shall be added to federal adjusted gross income any applica-
11 ble alimony or separate maintenance payments received by the taxpayer
12 during the taxable year.

13 (2) (A) The term "alimony or separate maintenance payments" means
14 payments as defined under section seventy-one of the internal revenue
15 code in effect immediately prior to the enactment of Public Law 115-97.

16 (B) The term "applicable alimony or separate maintenance payments"
17 means payments made under an alimony or separation instrument, as
18 defined in section seventy-one of the internal revenue code in effect
19 immediately prior to the enactment of Public Law 115-97, that was
20 executed after December thirty-first, two thousand eighteen, and any
21 divorce or separation instrument executed on or before such date and
22 modified after such date if the modification expressly provides that the
23 amendments made by this section apply to such modification.

24 (v) Qualified moving expense reimbursement and moving expenses. (1) In
25 the case of applicable qualified moving expense reimbursement and moving
26 expenses, the following modifications shall apply:

27 (A) There shall be subtracted from federal adjusted gross income any
28 applicable qualified moving expense reimbursement received by the
29 taxpayer during the taxable year.

30 (B) There shall be subtracted from federal adjusted gross income any
31 applicable moving expenses paid by the taxpayer during the taxable year.

32 (2) Applicable qualified moving expense reimbursement and moving
33 expenses are those deductions as allowed by paragraph (g) of section one
34 hundred thirty-two and section two hundred seventeen, respectfully, of
35 the internal revenue code immediately prior to the enactment of Public
36 Law 115-97.

37 § 11-1713 City deduction of a resident individual. The city
38 deduction of a city resident individual shall be his or her city stand-
39 ard deduction unless such resident individual elects to deduct his or
40 her city itemized deduction under the conditions set forth in section
41 11-1715 of this chapter.

42 § 11-1714 City standard deduction of a city resident individual. (a)
43 Unmarried individual. For taxable years beginning after nineteen hundred
44 ninety-five, the city standard deduction of a city resident individual
45 who is not married nor the head of a household nor a surviving spouse
46 nor an individual who is claimed as a dependent by another New York
47 state taxpayer shall be seven thousand five hundred dollars; for taxable
48 years beginning in nineteen hundred ninety-five, such standard deduction
49 shall be seven thousand four hundred dollars; for taxable years begin-
50 ning in nineteen hundred ninety-four, such standard deduction shall be
51 six thousand six hundred dollars; and for taxable years beginning after
52 nineteen hundred eighty-nine and before nineteen hundred ninety-four,
53 such standard deduction shall be six thousand dollars.

54 (b) Husband and wife filing jointly and surviving spouse. For taxable
55 years beginning after nineteen hundred ninety-five, the city standard
56 deduction of a husband and wife whose city taxable income is determined

1 jointly or a surviving spouse shall be thirteen thousand dollars; for
2 taxable years beginning in nineteen hundred ninety-five, such standard
3 deduction shall be twelve thousand three hundred fifty dollars; for
4 taxable years beginning in nineteen hundred ninety-four, such standard
5 deduction shall be ten thousand eight hundred dollars; and for taxable
6 years beginning after nineteen hundred eighty-nine and before nineteen
7 hundred ninety-four, such standard deduction shall be nine thousand five
8 hundred dollars.

9 (c) Head of household. For taxable years beginning after nineteen
10 hundred ninety-five, the city standard deduction of an individual who is
11 a head of household shall be ten thousand five hundred dollars; for
12 taxable years beginning in nineteen hundred ninety-five, such standard
13 deduction shall be ten thousand dollars; for taxable years beginning in
14 nineteen hundred ninety-four, such standard deduction shall be eight
15 thousand one hundred fifty dollars; and for taxable years beginning
16 after nineteen hundred eighty-nine and before nineteen hundred ninety-
17 four, such standard deduction shall be seven thousand dollars.

18 (d) Married individuals filing separately. For taxable years beginning
19 after nineteen hundred ninety-five, the city standard deduction of a
20 married individual filing a separate return shall be six thousand five
21 hundred dollars; for taxable years beginning in nineteen hundred nine-
22 ty-five, such standard deduction shall be six thousand one hundred
23 seventy-five dollars; for taxable years beginning in nineteen hundred
24 ninety-four, such standard deduction shall be five thousand four hundred
25 dollars; and for taxable years beginning after nineteen hundred eighty-
26 nine and before nineteen hundred ninety-four, such standard deduction
27 shall be four thousand seven hundred fifty dollars.

28 (e) Standard deduction of a dependent individual. For taxable years
29 beginning after nineteen hundred ninety-five, the city standard
30 deduction of a city resident individual whose federal exemption amount
31 is zero shall be three thousand dollars; for taxable years beginning in
32 nineteen hundred ninety-five, such standard deduction shall be two thou-
33 sand nine hundred dollars; and for taxable years beginning after nine-
34 teen hundred eighty-nine and before nineteen hundred ninety-five, such
35 standard deduction shall be two thousand eight hundred dollars.

36 (f) For taxable years beginning on or after January first, two thou-
37 sand thirteen, the amounts of standard deductions set forth in this
38 section shall be adjusted in the same manner as the amounts of standard
39 deductions set forth in section six hundred fourteen of the tax law.

40 § 11-1715 City itemized deduction of a city resident individual.

41 (a) General. If federal taxable income of a city resident individual
42 is determined by itemizing deductions or claiming the federal standard
43 deduction from his or her federal adjusted gross income, such resident
44 individual may elect to deduct his or her city itemized deduction or
45 claim his or her city standard deduction.

46 The city itemized deduction of a city resident individual means the
47 total amount of his or her deductions from federal adjusted gross income
48 allowed, other than federal deductions for personal exemptions, as
49 provided in the laws of the United States for the taxable year, as such
50 deductions existed immediately prior to the enactment of Public Law
51 115-97 with the modifications specified in this section, except as
52 provided for under subdivision (f) of this section.

53 (b) Husband and wife.

54 (1) A husband and wife, both of whom are required to file returns
55 under this chapter, shall be allowed city itemized deductions only if
56 both elect to take city itemized deductions.

1 (2) The total of the city itemized deductions of a husband and wife
2 whose federal taxable income is determined on a joint return, but whose
3 city taxable incomes are required to be determined separately, shall be
4 divided between them as if their federal taxable incomes had been deter-
5 mined separately.

6 (c) Modifications reducing federal itemized deductions. The total
7 amount of deductions from federal adjusted gross income shall be reduced
8 by the amount of such federal deductions for:

9 (1) state and local general sales taxes as defined in subsection (b)
10 of section one hundred sixty-four of the internal revenue code, to the
11 extent included in federal itemized deductions or income taxes imposed
12 by this city or any other taxing jurisdiction, except city earnings
13 taxes on nonresidents that are imposed upon and paid by taxpayers for
14 taxable years beginning after December thirty-first, nineteen hundred
15 seventy and before January first, two thousand, to the extent that the
16 amount of such tax exceeds the tax computed as if the rates were one-
17 fourth of one percent of wages subject to tax and three-eighths of one
18 percent of net earnings from self-employment subject to tax;

19 (2) interest on indebtedness incurred or continued to purchase or
20 carry obligations or securities the interest on which is exempt from tax
21 under this chapter; and

22 (3) ordinary and necessary expenses paid or incurred during the taxa-
23 ble year for: (i) the production or collection of income which is exempt
24 from tax under this chapter, or (ii) the management, conservation or
25 maintenance of property held for the production of such income, and the
26 amortizable bond premium for the taxable year on any bond the interest
27 on which is exempt from tax under this chapter, to the extent that such
28 expenses and premiums are deductible in determining federal taxable
29 income.

30 (4) premiums paid for long-term care insurance to the extent that such
31 premiums are deductible in determining federal taxable income.

32 (6) in the case of a shareholder of an S corporation:

33 (A) where the election provided for in subsection (a) of section six
34 hundred sixty of the tax law has not been made, S corporation items of
35 deduction included in federal itemized deductions, and

36 (B) in the case of a New York S termination year, the portion of such
37 items assigned to the period beginning on the day the election ceases to
38 be effective, as determined under subdivision (s) of section 11-1712 of
39 this subchapter.

40 (d) Modifications increasing federal itemized deductions. The total
41 amount of deductions from federal adjusted gross income shall be
42 increased by:

43 (1) (Reserved.)

44 (2) interest on indebtedness incurred or continued to purchase or
45 carry obligations or securities the interest on which is subject to tax
46 under this chapter but exempt from federal income tax, to the extent
47 that such interest on indebtedness is not deductible for federal income
48 tax purposes and is not subtracted from federal adjusted gross income
49 pursuant to paragraph nine of subdivision (c) of section 11-1712 of this
50 subchapter; and

51 (3) ordinary and necessary expenses paid or incurred during the taxa-
52 ble year for: (i) the production or collection of income which is
53 subject to tax under this chapter but exempt from federal income tax, or
54 (ii) the management, conservation or maintenance of property held for
55 the production of such income, and the amortizable bond premium for the
56 taxable year on any bond the interest on which is subject to tax under

1 this chapter but exempt from federal income tax, to the extent that such
2 expenses and premiums are not deductible in determining federal adjusted
3 gross income and are not subtracted from federal adjusted gross income
4 pursuant to paragraph ten of subdivision (c) of section 11-1712 of this
5 subchapter.

6 (4) allowable college tuition expenses, as defined in paragraph two of
7 subsection (t) of section six hundred six of the tax law, multiplied by
8 the applicable percentage. Such applicable percentage shall be twenty-
9 five percent for taxable years beginning in two thousand one, fifty-
10 percent for taxable years beginning in two thousand two, seventy-five
11 percent for taxable years beginning in two thousand three and one
12 hundred percent for taxable years beginning after two thousand three.
13 Provided, however, no deduction shall be allowed under this paragraph to
14 a taxpayer who claims the credit provided under subsection (t) of
15 section six hundred six of the tax law.

16 (e) Modification of partners and shareholders of S corporations. (1)
17 Partners and shareholders of S corporations which are not New York C
18 corporations. The amounts of modifications under subdivision (c) or
19 under paragraph two or three of subdivision (d) required to be made by a
20 partner or by a shareholder of an S corporation, other than an S corpo-
21 ration which is a New York C corporation, with respect to items of
22 deduction of a partnership or S corporation shall be determined under
23 section 11-1717 of this subchapter.

24 (2) Shareholders of S corporations which are New York C corporations.
25 In the case of a shareholder of an S corporation which is a New York C
26 corporation, the modifications under this section which relate to the
27 corporation's items of deduction shall not apply, except for the modifi-
28 cation provided under paragraph six of subdivision (c) of this section.

29 (3) New York S termination year. In the case of a New York S termi-
30 nation year, the amounts of the modifications required under this
31 section which relate to the S corporation's items of deduction shall be
32 adjusted in the same manner that the S corporation's items are adjusted
33 under subdivision (s) of section 11-1712 of this subchapter.

34 (f) Except as otherwise provided under subdivision (g) of this
35 section, the city itemized deduction otherwise allowable under this
36 section shall be reduced by the sum of the amounts determined under
37 paragraphs one and two of this subdivision.

38 (1) An amount equal to the city itemized deduction otherwise allowable
39 under subdivision (a) of this section, multiplied by a percentage, such
40 percentage to be determined by multiplying, for taxable years beginning
41 in nineteen hundred eighty-eight, ten percent, and for taxable years
42 beginning after nineteen hundred eighty-eight, twenty-five percent, by a
43 fraction,

44 (A) in the case of an unmarried individual or married individual
45 filing a separate return, the numerator of which is the lesser of fifty
46 thousand dollars or the excess of such individual's city adjusted gross
47 income over one hundred thousand dollars and the denominator of which is
48 fifty thousand dollars;

49 (B) in the case of a married individual filing a joint return or a
50 surviving spouse, the numerator of which is the lesser of fifty thousand
51 dollars or the excess of such individual's city adjusted gross income
52 over two hundred thousand dollars and the denominator of which is fifty
53 thousand dollars;

54 (C) in the case of a head of household, the numerator of which is the
55 lesser of fifty thousand dollars or the excess of such individual's city

1 adjusted gross income over one hundred fifty thousand dollars and the
2 denominator of which is fifty thousand dollars.

3 (2) An amount equal to the city itemized deduction of an individual
4 otherwise allowable under subdivision (a) of this section, multiplied by
5 a percentage, such percentage to be determined by multiplying, for taxa-
6 ble years beginning in nineteen hundred eighty-eight, ten percent, and
7 for taxable years beginning after nineteen hundred eighty-eight, twen-
8 ty-five percent, by a fraction, the numerator of which is the lesser of
9 fifty thousand dollars or the excess of such individual's city adjusted
10 gross income over four hundred seventy-five thousand dollars and the
11 denominator of which is fifty thousand dollars.

12 (g) Notwithstanding subdivision (a) of this section, the city itemized
13 deduction for charitable contributions shall be the amount allowed under
14 section one hundred seventy of the internal revenue code, as limited by
15 this subdivision. (1) With respect to an individual whose New York
16 adjusted gross income is over one million dollars but no more than ten
17 million dollars, the New York itemized deduction shall be an amount
18 equal to fifty percent of any charitable contribution deduction allowed
19 under section one hundred seventy of the internal revenue code for taxa-
20 ble years beginning after two thousand nine and before two thousand
21 twenty-five. With respect to an individual whose New York adjusted gross
22 income is over one million dollars, the New York itemized deduction
23 shall be an amount equal to fifty percent of any charitable contribution
24 deduction allowed under section one hundred seventy of the internal
25 revenue code for taxable years beginning in two thousand nine or after
26 two thousand twenty-four.

27 (2) With respect to an individual whose New York adjusted gross income
28 is over ten million dollars, the New York itemized deduction shall be an
29 amount equal to twenty-five percent of any charitable contribution
30 deduction allowed under section one hundred seventy of the internal
31 revenue code for taxable years beginning after two thousand nine and
32 ending before two thousand twenty-five.

33 § 11-1716 City exemptions of a city resident individual. (a) Gener-
34 al. For taxable years beginning after nineteen hundred eighty-seven, a
35 city resident individual shall be allowed a city exemption of one thou-
36 sand dollars for each exemption for which such resident individual is
37 entitled to a deduction for the taxable year under subsection (c) of
38 section one hundred fifty-one of the internal revenue code; and for
39 taxable years beginning in nineteen hundred eighty-seven, a city resi-
40 dent individual other than a taxpayer whose federal exemption amount is
41 zero shall be allowed a city exemption of nine hundred dollars for each
42 exemption for which he or she is entitled to a deduction for the taxable
43 year for federal income tax purposes.

44 (b) Husband and wife. If the city income taxes of a husband and wife
45 are required to be separately determined but their federal income tax is
46 determined on a joint return, each of them shall be separately entitled
47 to the city exemptions under subdivision (a) of this section to which
48 each would be separately entitled for the taxable year if their federal
49 income taxes had been determined on separate returns.

50 § 11-1717 Resident partners and shareholders of S corporations. (a)
51 Partner's and shareholder's modifications. In determining city adjusted
52 gross income and city taxable income of a city resident partner or a
53 city resident shareholder of an S corporation, other than an S corpo-
54 ration which is a New York C corporation, any modification described in
55 subdivision (b), (c) or (d) of section 11-1712 of this subchapter, or
56 subdivision (c) of section 11-1715 of this subchapter or paragraph two

1 or three of subdivision (d) of such section, which relates to an item of
2 partnership or S corporation income, gain, loss or deduction shall be
3 made in accordance with the partner's distributive share or the share-
4 holder's pro rata share, for federal income tax purposes, of the item to
5 which the modification relates. Where a partner's distributive share or
6 a shareholder's pro rata share of any such item is not required to be
7 taken into account separately for federal income tax purposes, the part-
8 ner's or shareholder's share of such item shall be determined in accord-
9 ance with his or her share, for federal income tax purposes, of partner-
10 ship or S corporation taxable income or loss generally. In the case of
11 a New York S termination year, his or her pro rata share of any such
12 item shall be determined under subdivision (s) of section 11-1712 of
13 this subchapter.

14 (b) Character of items. Each item of partnership and S corporation
15 income, gain, loss, or deduction shall have the same character for a
16 partner or shareholder under this subchapter as for federal income tax
17 purposes. Where an item is not characterized for federal income tax
18 purposes, it shall have the same character for a partner or shareholder
19 as if realized directly from the source from which realized by the part-
20 nership or S corporation or incurred in the same manner as incurred by
21 the partnership or S corporation.

22 (c) City tax avoidance or evasion. Where a partner's distributive
23 share of an item of partnership income, gain, loss or deduction is
24 determined for federal income tax purposes by special provision in the
25 partnership agreement with respect to such item, and where the principal
26 purpose of such provision is the avoidance or evasion of tax under this
27 chapter, the partner's distributive share of such item, and any modifi-
28 cation required with respect thereto, shall be determined as if the
29 partnership agreement made no special provision with respect to such
30 item.

31 § 11-1717.1 Residents; special provisions. Notwithstanding any other
32 provisions of this chapter, the city adjusted gross income and the city
33 taxable income of a resident individual or partner of a partnership
34 doing an insurance business as a member of the New York insurance
35 exchange described in section six thousand two hundred one of the insur-
36 ance law, shall not include any item of income, gain, loss or deduction
37 of such business, which is the individual's distributive or pro rata
38 share for federal income tax purposes or which the individual is
39 required to take into account separately for federal income tax
40 purposes. Provided however, such individual's city adjusted gross
41 income shall include his or her distributive or pro rata share of the
42 allocated entire net income as determined by such business under
43 sections fifteen hundred three and fifteen hundred four of the tax law.
44 In the event such allocated entire net income is a loss, there shall not
45 be subtracted from federal adjusted gross income in computing city
46 adjusted gross income such individual's distributive share of such loss.

47 § 11-1718 City taxable income of a city resident estate or trust.
48 The city taxable income of a city resident estate or trust means its
49 federal taxable income as defined in the laws of the United States for
50 the taxable year, with the following modifications:

51 (2) There shall be subtracted the modifications described in para-
52 graphs four and five of subdivision (c) of section 11-1712 of this
53 subchapter, with respect to gains from the sale or other disposition of
54 property, to the extent such gains are excluded from federal distribut-
55 able net income of the estate or trust.

1 (3) There shall be added or subtracted, as the case may be, the share
2 of the estate or trust in the city fiduciary adjustment determined under
3 section 11-1719 of this subchapter.

4 (4) There shall be added or subtracted, as the case may be, the
5 modifications described in paragraphs six, ten, seventeen, eighteen,
6 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,
7 twenty-five, twenty-six, twenty-seven, twenty-nine, thirty-four and
8 thirty-five of subdivision (b) and in paragraphs eleven, thirteen,
9 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
10 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
11 section 11-1712 of this subchapter.

12 (5) In the case of a trust, there shall be added the amount of any
13 includible gain, reduced by any deductions properly allocable thereto,
14 upon which tax is imposed for the taxable year pursuant to section six
15 hundred forty-four of the internal revenue code.

16 § 11-1719 Share of a resident estate, trust or beneficiary in city
17 fiduciary adjustment. (a) General. An adjustment shall be made in
18 determining city taxable income of a city resident estate or trust under
19 section 11-1718 of this subchapter, or city adjusted gross income of a
20 city resident beneficiary of any estate or trust under subdivision (d)
21 of section 11-1712 of this subchapter, in the amount of the share of
22 each in the city fiduciary adjustment as determined in this section.

23 (b) Definition. The city fiduciary adjustment shall be the net
24 amount of the modifications described in section 11-1712 of this
25 subchapter, including subdivision (d) if the estate or trust is a bene-
26 ficiary of another estate or trust, in subdivision (c) and paragraphs
27 two and three of subdivision (d) of section 11-1715 of this subchapter,
28 and in subdivision (e) of this section, which relate to items of income,
29 gain, loss or deduction of an estate or trust. The net amount of such
30 modifications shall not include:

31 (1) Any modification described in paragraphs one and two of subdivi-
32 sion (b) and paragraphs one, two, four, five, six, and seven of subdivi-
33 sion (c) of section 11-1712 of this subchapter with respect to any
34 amount which, pursuant to the terms of the governing instrument, is paid
35 or permanently set aside for a charitable purpose during the taxable
36 year, and

37 (2) Any modification described in paragraph four or five of subdivi-
38 sion (c) of section 11-1712 of this subchapter, with respect to gains
39 from the sale or other disposition of property, to the extent such gains
40 are excluded from federal distributable net income of the estate or
41 trust.

42 (c) Shares of city fiduciary adjustment.

43 (1) The respective shares of an estate or trust and its benefici-
44 aries, including, solely for the purpose of this allocation, nonresident
45 beneficiaries, in the city fiduciary adjustment shall be in proportion
46 to their respective shares of federal distributable net income of the
47 estate or trust.

48 (2) If the estate or trust has no federal distributable net income
49 for the taxable year, the share of each beneficiary in the city fiduci-
50 ary adjustment shall be in proportion to his or her share of the estate
51 or trust income for such year, under local law or the governing instru-
52 ment, which is required to be distributed currently and any other
53 amounts of such income distributed in such year. Any balance of the
54 city fiduciary adjustment shall be allocated to the estate or trust.

55 (d) Alternate attribution of modifications. The tax commission may
56 by regulation establish such other method or methods of determining to

1 whom the items comprising the fiduciary adjustment shall be attributed,
2 as may be appropriate and equitable. Such method may be used by the
3 fiduciary in his or her discretion whenever the allocation of the fidu-
4 ciary adjustment pursuant to subdivision (c) of this section would
5 result in an inequity which is substantial both in amount and in
6 relation to the amount of the fiduciary adjustment.

7 (e) Additional modifications. (1) For any taxable year beginning after
8 December thirty-first, two thousand seventeen, and before January first,
9 two thousand twenty-six, to the extent that the estate or trust claimed
10 a deduction for taxes under section one hundred sixty-four of the inter-
11 nal revenue code that was limited to ten thousand dollars as provided in
12 subparagraph (B) of paragraph six of subdivision (b) of such section one
13 hundred sixty-four or was denied as a result of subparagraph (A) of
14 paragraph six of subdivision (b) of such section one hundred sixty-four,
15 there shall be subtracted the taxes paid or accrued in that taxable year
16 by an estate or trust that the estate or trust was not able to deduct
17 for federal income tax purposes because of such limitation or denial,
18 other than state and local sales taxes and income taxes described in
19 paragraph one of subdivision (c) of section 11-1715 of this subchapter.
20 In determining the makeup of the ten thousand dollars of deduction
21 claimed by the estate or trust under section one hundred sixty-four of
22 the internal revenue code, it shall be presumed that the ten thousand
23 dollars of deduction first comprises the state and local sales taxes or
24 income taxes the estate or trust accrued or paid during the taxable
25 year.

26 (2) For any taxable year beginning after December thirty-first, two
27 thousand seventeen, and before January first, two thousand twenty-six,
28 there shall be subtracted the miscellaneous itemized deductions as
29 described in and limited by section sixty-seven of the internal revenue
30 code, but excluding the deductions described in subsection (e) of
31 section sixty-seven of such code, but determined without regard to
32 subsection (g) of such section.

33 (3) For any taxable year, there shall be added the amount of any
34 deduction allowed pursuant to section one hundred ninety-nine-A of the
35 internal revenue code.

36 § 11-1721 Credits to trust beneficiary receiving accumulation distrib-
37 ution. (a) General. A city resident beneficiary of a trust whose city
38 adjusted gross income includes all or part of an accumulation distrib-
39 ution by such trust, as defined in section six hundred sixty-five of the
40 internal revenue code, including a beneficiary who is required to make
41 the modification required by paragraph thirty-six of subdivision (b) of
42 section 11-1712 of this subchapter, shall be allowed (1) a credit
43 against the tax otherwise due under this chapter for all or a propor-
44 tionate part of any tax paid by the trust under this chapter or under
45 former title T of chapter forty-six of the code of the preceding munici-
46 pality, as it was in effect prior to September first, nineteen hundred
47 eighty-six, for any preceding taxable year which would not have been
48 payable if the trust had in fact made distributions to its beneficiaries
49 at the times and in the amounts specified in section six hundred sixty-
50 six of the internal revenue code; and (2) a credit against the taxes
51 imposed by this chapter for the taxable year for any income tax imposed
52 for the taxable year or any prior taxable year by another state of the
53 United States, a political subdivision thereof, or the District of
54 Columbia, upon income both derived therefrom and subject to tax under
55 this chapter, provided that the amount of the credit shall not exceed
56 the percentage of the tax otherwise due under this chapter determined by

1 dividing the portion of the income that is both taxable to the trust in
2 such other jurisdiction and taxable to the beneficiary under this chap-
3 ter by the total amount of the beneficiary's New York city income.

4 (b) Limitation. The credits under this section shall not reduce the
5 tax otherwise due from the beneficiary under this chapter to an amount
6 less than would have been due if the accumulation distribution or his or
7 her part thereof were excluded from his or her city adjusted gross
8 income.

9 § 11-1724 Computation of separate tax on the ordinary income portion
10 of lump sum distributions received by city resident individuals, estates
11 and trusts. (a) Amount of separate tax. The amount of tax imposed under
12 section 11-1703 of this chapter for any taxable year, with respect to
13 the ordinary income portion of a lump sum distribution received by a
14 city resident individual, estate or trust is an amount equal to five
15 times the tax which would be imposed by section 11-1701 of this chapter
16 at the rate set forth in paragraph three of subdivision (a) or (b),
17 whichever may be applicable, if the recipient of such lump sum distrib-
18 ution were an individual referred to in such subdivision and the city
19 taxable income were an amount equal to one-fifth of the excess of:

20 (1) the total taxable amount of the lump sum distribution for the
21 taxable year, over

22 (2) the minimum distribution allowance.

23 (b) Minimum distribution allowance. For purposes of this section, the
24 minimum distribution allowance shall be that which is calculated accord-
25 ing to subparagraph (C) of paragraph one of subsection (e) of section
26 four hundred two of the internal revenue code.

27 (c) Multiple distributions and distributions of annuity contracts.
28 For purposes of this section, the rules concerning multiple distrib-
29 utions and distributions of annuity contracts as specified by paragraph
30 two of subsection (e) of section four hundred two of the internal reven-
31 ue code shall be applicable, except that references to "paragraph one
32 (A)" shall be deemed to be references to this section, and except that
33 only lump sum distributions, or portions thereof, and distributions of
34 annuity contracts subject to tax under this chapter shall be included,
35 and except that references to the secretary shall be deemed to be refer-
36 ences to the tax commission.

37 (d) Definitions and special rules. For purposes of this section, the
38 following provisions shall apply, to the extent applicable to the
39 taxpayer's federal tax on lump sum distributions: (1) the definitions
40 and special rules as specified in paragraph four of subsection (e) of
41 section four hundred two of the internal revenue code; and (2) the
42 special rules relating to (A) individuals who have attained the age of
43 fifty before January first, nineteen hundred eighty-six and (B) capital
44 gains, as specified in paragraphs three, four, five and six of
45 subsection (h) of section eleven hundred twenty-two of the tax reform
46 act of nineteen hundred eighty-six as enacted by public law 99-514, but
47 (i) in the event that paragraph three of such subsection is applicable,
48 clause (ii) of subparagraph (B) of such paragraph shall be applied using
49 a rate of one and seventy-two hundredths percent, and (ii) in the event
50 that paragraph five of such subsection is applicable, the words "five"
51 and "one-fifth" in subdivision (a) of this section shall be read as
52 "ten" and "one-tenth", respectively, and subdivision (a) of this section
53 shall be applied by using the rate of tax specified in subdivision (a)
54 of section 11-1702 of this chapter as such subdivision was in effect for
55 taxable years beginning in nineteen hundred eighty-six.

SUBCHAPTER 3
RETURNS AND PAYMENT OF TAX

1
2
3 § 11-1751 Returns and liabilities. (a) General. On or before the
4 fifteenth day of the fourth month following the close of a taxable year,
5 an income tax return under this chapter shall be made and filed by or
6 for every city resident individual, estate or trust required to file a
7 New York state personal income tax, including a separate tax on the
8 ordinary income portion of lump sum distributions, return for the taxa-
9 ble year.

10 (b) Husband and wife. (1) If the New York state personal income tax
11 liability of husband and wife is determined on a separate return, their
12 city personal income tax liabilities and returns shall be separate.

13 (2) If the New York state personal income tax liabilities of husband
14 and wife, other than a husband and wife described in paragraph three of
15 this subdivision, are determined on a joint return, they shall file a
16 joint city personal income tax return, and their tax liabilities shall
17 be joint and several except as provided in paragraphs four and five of
18 this subdivision and in subsection (e) of section six hundred eighty-
19 five of the tax law.

20 (3) If the New York state personal income tax liabilities of husband
21 and wife, other than a husband and wife described in paragraph three of
22 this subdivision are determined on a joint return, they shall file a
23 joint city personal income tax return, and their tax liabilities shall
24 be joint and several except as provided in paragraph five of this subdi-
25 vision, section 11-1755 of this subchapter and subsection (e) of section
26 six hundred eighty-five of the tax law.

27 (4) If either husband or wife is a city resident and the other is a
28 city nonresident, and their New York state personal income tax liabil-
29 ities are determined on a joint return:

30 (A) they may elect to file a joint city personal income tax return as
31 if both were residents, in which case their city personal income tax
32 liabilities shall be joint and several except as provided in paragraphs
33 four and five of this subdivision and in subsection (e) of section six
34 hundred eighty-five of the tax law, or

35 (B) they may elect to file a joint city personal income tax return as
36 if both were residents, in which case their city personal income tax
37 liabilities shall be joint and several except as provided in paragraph
38 five of this subdivision, section 11-1755 of this subchapter and
39 subsection (e) of section six hundred eighty-five of the tax law, or

40 (C) the resident spouse may elect to file a separate city personal
41 income tax return, in which case his or her city personal income tax
42 liability shall be determined as if he or she were filing a separate New
43 York state personal income tax return.

44 (5) If a joint return has been made under this subdivision for a taxa-
45 ble year and only one spouse is liable for past-due support, or a past-
46 due legally enforceable debt, or a city of New York tax warrant judgment
47 debt, or an amount of a default in repayment of a guaranteed student,
48 state university or city university loan of which the state commissioner
49 of taxation and finance has been notified pursuant to section one
50 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-
51 one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax
52 law, as the case may be, then an overpayment and interest thereon shall
53 be credited against such past-due support, or a past-due legally
54 enforceable debt, or a city of New York tax warrant judgment debt, or
55 such amount of a default in repayment of a guaranteed student, state

1 university or city university loan, unless the spouse not liable for
2 such past-due support, or a past-due legally enforceable debt, or a city
3 of New York tax warrant judgment debt, or such amount of a default in
4 repayment of a guaranteed student, state university or city university
5 loan demands, on a declaration made in accordance with regulations or
6 instructions prescribed by the state commissioner of taxation and
7 finance, that the portion of the overpayment and interest attributable
8 to such spouse not be credited against the past-due support, or a past-
9 due legally enforceable debt, or a city of New York tax warrant judgment
10 debt, or amount of a default in repayment of a guaranteed student, state
11 university or city university loan owed by the other spouse. Upon such
12 demand, the state commissioner of taxation and finance shall determine
13 the amount of the overpayment attributable to each spouse in accordance
14 with regulations prescribed by the state commissioner of taxation and
15 finance and credit only that portion of the overpayment and interest
16 thereon attributable to the spouse liable for past-due support, or a
17 past-due legally enforceable debt, or a city of New York tax warrant
18 judgment debt, or amount of a default in repayment of a guaranteed
19 student, state university or city university loan against such past-due
20 support, or a past-due legally enforceable debt, or a city of New York
21 tax warrant judgment debt, or such amount of a default in repayment of a
22 guaranteed student, state university or city university loan. Such
23 demand may be filed (A) with the return of the spouse not liable for
24 past-due support or past-due legally enforceable debt, or a city of New
25 York tax warrant judgment debt, or default in repayment of a guaranteed
26 student, state university, or city university loan or (B) with the
27 commissioner of taxation and finance within ten days after notification
28 is provided such spouse by the commissioner of taxation and finance
29 pursuant to subdivision seven of section one hundred seventy-one-c,
30 subdivision six of section one hundred seventy-one-d, subdivision seven
31 of section one hundred seventy-one-e, subdivision seven of section one
32 hundred seventy-one-f or subdivision six of section one hundred seven-
33 ty-one-1 of the tax law.

34 (6) The state commissioner of taxation and finance shall clearly alert
35 married taxpayers, on all appropriate publications and instructions,
36 that their liability for tax will be joint and several if they file
37 joint income tax returns. The state commissioner of taxation and finance
38 shall include notice of an individual's right to relief from joint and
39 several liability pursuant to section six hundred fifty-four of the tax
40 law in the disclosure of rights statement required by section three
41 thousand four of the tax law and in any notice regarding collection of
42 tax due with respect to a liability on a joint return.

43 (c) Decedents. The return for any deceased individual shall be made
44 and filed by his or her executor, administrator, or other person charged
45 with his or her property. If a final return of a decedent is for a
46 fractional part of a year, the due date of such return shall be the
47 fifteenth day of the fourth month following the close of the twelve-
48 month period which began with the first day of such fractional part of
49 the year.

50 (d) Individuals under a disability. The return for an individual who
51 is unable to make a return by reason of minority or other disability
52 shall be made and filed by his or her guardian, committee, fiduciary or
53 other person charged with the care of his or her person or property
54 other than a receiver in possession of only a part of his or her proper-
55 ty, or by his or her duly authorized agent.

1 (e) Estates and trusts. The return for an estate or trust shall be
2 made and filed by the fiduciary.

3 (f) Joint fiduciaries. If two or more fiduciaries are acting jointly,
4 the return may be made by any one of them.

5 (h) Tax a debt. Any tax under this chapter, and any increase, interest
6 or penalty thereon, shall, from the time it is due and payable, be a
7 personal debt of the person liable to pay the same, to the city of New
8 York.

9 (i) Cross reference. For provisions as to information returns by part-
10 nerships, employers and other persons, see section 11-1758 of this
11 subchapter.

12 § 11-1752 Time and place for filing returns and paying tax. (a)
13 Except as provided in subdivision (b) of this section, a person required
14 to make and file a return under this chapter shall, without assessment,
15 notice or demand, pay any tax due thereon to the commissioner of taxa-
16 tion and finance on or before the date fixed for filing such return,
17 determined without regard to any extension of time for filing the
18 return. The commissioner shall prescribe by regulation the place for
19 filing any return, statement, or other document required pursuant to
20 this chapter and for payment of any tax.

21 (b) The commissioner of taxation and finance may allow individuals who
22 have income only from wages, salaries, tips and like remuneration for
23 services performed as an employee, interest, dividends and unemployment
24 compensation to elect to have the commissioner compute the tax due. To
25 provide for expeditious and uniform administration of the tax computa-
26 tions which involve numerous variables, the commissioner may further
27 qualify, with regard to period of residency, deductions, credits,
28 exemptions, amount and character of gross income, and any other appro-
29 priate factors relative to calculation of tax, those individuals who may
30 elect to have their taxes computed by the commissioner. Any such
31 election shall be made on the form prescribed by the commissioner for
32 this purpose. If a qualified taxpayer elects to have the commissioner
33 compute the tax, the amount determined by the commissioner shall be paid
34 (i) within ten days from the date of the issuance of a notice and demand
35 therefor or (ii) on the date fixed for filing such return, determined
36 without regard to any extension of time for filing, whichever is later.

37 § 11-1753 Signing of returns and other documents. (a) General. Any
38 return, statement or other document required to be made pursuant to this
39 chapter shall be signed in accordance with regulations or instructions
40 prescribed by the tax commission. The fact that an individual's name is
41 signed to a return, statement, or other document, shall be prima facie
42 evidence for all purposes that the return, statement or other document
43 was actually signed by such individual.

44 (b) Partnerships. Any return, statement or other document required of
45 a partnership shall be signed by one or more partners. The fact that a
46 partner's name is signed to a return, statement, or other document,
47 shall be prima facie evidence for all purposes that such partner is
48 authorized to sign on behalf of the partnership.

49 (c) Certifications. The making or filing of any return, statement or
50 other document or copy thereof required to be made or filed pursuant to
51 this chapter, including a copy of a federal return, shall constitute a
52 certification by the person making or filing such return, statement or
53 other document or copy thereof that the statements contained therein are
54 true and that any copy filed is a true copy.

55 § 11-1754 Change of resident status during year. (a) General. If an
56 individual changes his or her status during his or her taxable year from

1 city resident to city nonresident, or from city nonresident to city
2 resident, such individual shall file one return as a resident for the
3 portion of the year during which he or she is a city resident, and a
4 return under chapter nineteen of this title, for the portion of the year
5 during which he or she is a city nonresident, subject to such exceptions
6 as the tax commission may prescribe by regulation.

7 (b) City taxable income as city resident. The city taxable income for
8 the portion of the year during which he or she is a city resident shall
9 be determined, except as provided in subdivision (c) of this section, as
10 if his or her taxable year for federal income tax purposes were limited
11 to the period of his or her city resident status.

12 (c) Special accruals.

13 (1) If an individual changes his or her status from city resident to
14 city nonresident, he or she shall, regardless of his or her method of
15 accounting, accrue for the portion of the taxable year prior to such
16 change of status any items of income, gain, loss or deduction accruing
17 prior to the change of status, if not otherwise properly includible,
18 whether or not because of an election to report on an installment basis,
19 or allowable for city income tax purposes for such portion of the taxa-
20 ble year or for a prior taxable year. The amounts of such accrued items
21 shall be determined with the applicable modifications described in
22 sections 11-1712 and 11-1715 of this chapter as if such accrued items
23 were includible or allowable for federal income tax purposes.

24 (2) If an individual changes his or her status from city nonresident
25 to city resident, he or she shall, regardless of his or her method of
26 accounting, accrue for the portion of the taxable year prior to such
27 change of status any items of income, gain, loss or deduction accruing
28 prior to the change of status, other than items derived from or
29 connected with New York state sources, if not otherwise properly inclu-
30 dible, whether or not because of an election to report on an installment
31 basis, or allowable for federal income tax purposes for such portion of
32 the taxable year or for a prior taxable year. The amounts of such
33 accrued items shall be determined with the applicable modifications
34 described in sections 11-1712 and 11-1715 of this chapter as if such
35 accrued items were includible or allowable for federal income tax
36 purposes.

37 (3) No item of income, gain, loss or deduction which is accrued under
38 this subdivision shall be taken into account in determining city
39 adjusted gross income or the city itemized deduction for any subsequent
40 taxable period.

41 (4) The accruals under this subdivision shall not be required if the
42 individual files with the tax commission a bond or other security
43 acceptable to the tax commission, conditioned upon the inclusion of
44 amounts accruable under this subdivision in city adjusted gross income
45 for one or more subsequent taxable years as if the individual had not
46 changed his or her resident status.

47 (5) The provisions of subdivisions (a), (b) and paragraphs one through
48 four of this subdivision shall apply if an individual changes his or her
49 status from a city resident to city nonresident or from a city nonresi-
50 dent to a city resident during a taxable year, or at the beginning of a
51 taxable year, as a result of a change of domicile or as a result of
52 becoming a city resident or city nonresident based on the definition
53 contained in subparagraph (B) of paragraph one of subdivision (b) of
54 section 11-1705 of this chapter.

55 (6) Except as provided in this paragraph, where an individual who is a
56 member of a partnership or shareholder of an S corporation changes

1 status from city resident to city nonresident, or from city nonresident
2 to city resident, the portion of the distributive or pro rata share of
3 income, gain and loss, less deductions attributable thereto, from a
4 partnership or S corporation shall be allocated to the resident and
5 nonresident periods of the partner or shareholder on a proportionate
6 basis throughout the taxable year of the partnership or S corporation.

7 In such event, the portion of the distributive or pro rata share allo-
8 cated to the period of residency shall be determined based on the number
9 of days of residency within the reporting period of the partnership or S
10 corporation over the total number of days in the reporting period of the
11 partnership or S corporation. Provided, however, that the commissioner
12 may require, or the individual may elect, to accrue to the period of
13 residence, and the period of nonresidence, the portion of the distribu-
14 tive or pro rata share of partnership or S corporation income, gain and
15 loss, less deductions attributable thereto, accruing during the individ-
16 ual's respective resident and nonresident periods in a manner that
17 reflects the date of accrual of said income, gain and loss by the part-
18 nership or S corporation.

19 (7) Except as provided in this paragraph, where an individual who is a
20 beneficiary of an estate or trust changes status from city resident to
21 city nonresident, or from city nonresident to city resident, the portion
22 of any estate or trust income credited, distributable, payable or
23 required to be distributed to such beneficiary shall be allocated to the
24 resident and nonresident periods of the beneficiary on a proportionate
25 basis throughout the taxable year of the estate or trust. In such event,
26 the portion of such estate or trust income allocated to the period of
27 residency shall be determined based on the number of days of residency
28 within the reporting period of the estate or trust over the total number
29 of days in the reporting period of the estate or trust. Provided, howev-
30 er, that the commissioner may require, or the beneficiary may elect, to
31 accrue to the period of residence, and the period of nonresidence, the
32 portion of such estate or trust income accruing during the beneficiary's
33 respective resident and nonresident periods in a manner that reflects
34 the date of accrual of said estate or trust income by the estate or
35 trust.

36 (d) City minimum tax. Where two returns are required under this
37 section, the total of the taxes due thereon shall not be less than would
38 be due if the city taxable incomes reportable on the two returns were
39 included in one return.

40 (e) Proration. Where a return is required under this section, the
41 city personal exemptions allowable under section 11-1716 of this chapter
42 shall be prorated, under regulations of the tax commission, to reflect
43 the portions of the entire taxable year during which the individual was
44 a resident.

45 (f) Standard deduction. Where a return is required under this
46 section, the city standard deduction allowable on such return shall be
47 the amount allowed pursuant to the provisions of section 11-1714 of this
48 chapter, prorated according to the period covered by the return.

49 (g) Trusts. If the status of a trust changes during its taxable year
50 from city resident to city nonresident, or from city nonresident to city
51 resident, the fiduciary shall file one return as a city resident trust
52 for the portion of the year during which the trust is a city resident
53 trust, and one return under chapter nineteen of this title for the
54 portion of the year during which the trust is a city nonresident trust,
55 subject to such exceptions as the tax commission may prescribe by regu-
56 lations. The provisions of subdivisions (b), (c), (d) and (e) of this

1 section shall apply for the purposes of this subdivision, except to the
2 extent that any of such provisions may be inconsistent with the
3 provisions of section 11-1718 of this chapter, and except that the term
4 "individual" shall be read as "trust", the term "city adjusted gross
5 income" shall be read as "city taxable income", reference to "gain"
6 shall include any modification for includible gain under subdivision
7 five of section 11-1718 of this chapter, and the phrase "personal
8 exemptions allowable under section 11-1716 of this chapter" shall be
9 read as "city exemptions allowable under section 11-1718 of this chap-
10 ter."

11 (h) Lump sum distributions. If the status of a taxpayer changes
12 during his or her taxable year from city resident to city nonresident,
13 or from city nonresident to city resident, the taxpayer shall, regard-
14 less of his method of accounting, accrue for the portion of the taxable
15 year prior to such change of status the total taxable amount of a lump
16 sum distribution accruing prior to the change of status, if the ordinary
17 income portion thereof is not otherwise subject to tax under section
18 11-1703 of this chapter for such portion of the taxable year or for a
19 prior taxable year. No ordinary income portion of a lump sum distrib-
20 ution the total taxable amount of which is accrued under this subdivi-
21 sion shall be subject to tax under section 11-1703 of this chapter for
22 any subsequent taxable period. The accrual under this subdivision shall
23 not be required if the taxpayer files with the tax commission a bond or
24 other security acceptable to the tax commission, conditioned upon the
25 payment of tax under section 11-1703 of this chapter, with respect to
26 such amount accruable under this subdivision, for a subsequent taxable
27 year as if the taxpayer had not changed its resident status.

28 (i) Deduction for two-earner married couples. Where a return is
29 required under this section, the amount of deduction under paragraph
30 twenty-nine of subdivision (c) of section 11-1712 of this chapter shall
31 be equal to ten percent of the lesser of:

32 (1) thirty thousand dollars, pro rated according to the period covered
33 by the return or

34 (2) the qualified earned income of the spouse with the lower qualified
35 earned income for the period covered by the return.

36 § 11-1755 Relief from joint and several liability on joint return.

37 (a) General. The provisions of section six thousand fifteen of the
38 internal revenue code applicable to the liability of individuals who
39 file joint income tax returns shall apply to the same extent as if such
40 section of such code were contained in and made part of this section,
41 except to the extent that any provision of such section is either incon-
42 sistent with or not relevant to this chapter and except as modified in
43 subdivision (b) of this section, or with such other modifications as may
44 be necessary to adapt the language of such provisions to the provisions
45 of this chapter.

46 (b) Modifications. Section six thousand fifteen of the internal reven-
47 ue code shall be read as modified by this subdivision.

48 (1) "Secretary" shall be read as "state commissioner of taxation and
49 finance".

50 (2) "Internal revenue service" shall be read as "department of taxa-
51 tion and finance".

52 (3) "Tax court" shall be read as "division of tax appeals".

53 (4) In the heading of subsection (a) and in clause (ii) of subpara-
54 graph (A) of paragraph three of subsection (c), the phrase "section
55 6013(d)(3)" shall be read as "paragraphs two and three of subdivision
56 (b) of section 11-1751 of this chapter".

1 (5) In paragraph three of subsection (b), the phrase "section
2 6662(d)(2)(A)" shall be read as "subdivision (p) of section 11-1785 of
3 this chapter".

4 (6) In subparagraph (B) of paragraph two of subsection (d), the phrase
5 "section 1 or 55" shall be read as "section 11-1701 of this chapter".

6 (7) In clause (i) of subparagraph (B) of paragraph one of subsection
7 (e), the phrase "section 6851 or 6861" shall be read as "section 11-1794
8 of this chapter" and "section 7485" shall be read as "subdivision (c) of
9 section 11-1790 of this chapter".

10 (8) In paragraph two of subsection (e), the phrase "section 6502"
11 shall be read as "section one hundred seventy-four-a of the tax law and
12 section 11-1792 of this chapter".

13 (9) In subparagraph (A) of paragraph three of subsection (e), the
14 phrase "section 6512(b), 7121, or 7122" shall be read as "subdivision
15 fifteenth, eighteenth, eighteenth-a or eighteenth-d of section one
16 hundred seventy-one of the tax law and subdivision (b) of section
17 11-1789 of this chapter".

18 (10) The following provisions of such section six thousand fifteen
19 shall be disregarded: (A) The phrase "notwithstanding the provisions of
20 section 7421(a)" contained in clause (ii) of subparagraph (B) of para-
21 graph one of subsection (e); and (B) subparagraph (C) of paragraph three
22 of subsection (e).

23 (c) Federal determination. If an individual is relieved of a federal
24 income tax liability pursuant to subsection (b) of section six thousand
25 fifteen of the internal revenue code, there shall be a rebuttable
26 presumption that such individual shall also be entitled to equivalent
27 relief from liability under this section, to the extent that such indi-
28 vidual has an understatement of tax under this chapter for the same
29 taxable year that is attributable to the same erroneous item or items to
30 which the individual's federal income tax liability was attributable.

31 § 11-1757 Extensions of time. (a) General. The commissioner of taxa-
32 tion and finance may grant a reasonable extension of time for payment of
33 tax or estimated tax, or any installment, or for filing any return,
34 statement, or other document required pursuant to this chapter, on such
35 terms and conditions as it may require. Except for a taxpayer who is
36 outside the United States or who intends to claim nonresident status
37 pursuant to clause (ii) of subparagraph (A) of paragraph one of subdivi-
38 sion (b) of section 11-1705 of this chapter, no such extension for
39 filing any return, statement or other document, shall exceed six months.

40 (b) Furnishing of security. If any extension of time is granted for
41 payment of any amount of tax, the tax commission may require the taxpay-
42 er to furnish a bond or other security in an amount not exceeding twice
43 the amount for which the extension of time for payment is granted on
44 such terms and conditions as the tax commission may require.

45 § 11-1758 Requirements concerning returns, notices, records and state-
46 ments. (a) General. The tax commission may prescribe regulations as to
47 the keeping of records, the content and form of returns and statements,
48 and the filing of copies of federal income tax returns and determi-
49 nations. The tax commission may require any person, by regulation or
50 notice served upon such person, to make such returns, render such state-
51 ments, or keep such records, as the tax commission may deem sufficient
52 to show whether or not such person is liable under this chapter for tax
53 or for collection of tax.

54 (b) Identifying numbers. (1) When required by regulations prescribed
55 by the tax commission:

1 (A) Inclusion in returns. Any person required under the authority of
2 this chapter to make a return, statement, or other document shall
3 include in such return, statement or other document such identifying
4 number as may be prescribed for securing proper identification of such
5 person.

6 (B) Furnishing number to other persons. Any person with respect to
7 whom a return, statement or other document is required under the author-
8 ity of this chapter to be made by another person shall furnish to such
9 other person such identifying number as may be prescribed for securing
10 his or her proper identification.

11 (C) Furnishing number of another person. Any person required under the
12 authority of this chapter to make a return, statement, or other document
13 with respect to another person shall request from such other person, and
14 shall include in any such return, statement, or other document, such
15 identifying number as may be prescribed for securing proper identifica-
16 tion of such other person.

17 (2) Limitation.

18 (A) Except as provided in subparagraph (B) of this paragraph, a return
19 of any person with respect to his or her liability for tax, or any
20 statement or other document in support thereof, shall not be considered
21 for purposes of subparagraphs (B) and (C) of paragraph one of this
22 subdivision as a return, statement or other document with respect to
23 another person.

24 (B) For purposes of subparagraphs (B) and (C) of paragraph one of this
25 subdivision, a return of an estate or trust with respect to its liabil-
26 ity for tax, and any statement or other document in support thereof,
27 shall be considered as a return, statement, or other document with
28 respect to each beneficiary of such estate or trust.

29 (3) Requirement of information. For purposes of this section, the tax
30 commission is authorized to require such information as may be necessary
31 to assign an identifying number to any person.

32 (c) Partnerships and S corporations.

33 (1) Partnerships. Every partnership having a city resident partner
34 shall make a return for the taxable year setting forth all items of
35 income, gain, loss and deduction and such other pertinent information as
36 the tax commission may by regulations and instructions prescribe. Such
37 return shall be filed on or before the fifteenth day of the fourth month
38 following the close of each taxable year except that the due date for
39 the return of a partnership consisting entirely of nonresident aliens
40 shall be the date prescribed for the filing of its federal partnership
41 return for the taxable year. For purposes of this paragraph, "taxable
42 year" means a year or a period which would be a taxable year of the
43 partnership if it were subject to tax under this chapter.

44 (2) S corporations. Every S corporation for which the election
45 provided for in subsection (a) of section six hundred sixty of the tax
46 law is in effect shall make a return setting forth all items of income,
47 loss and deduction and such other pertinent information as the tax
48 commission may by regulations and instructions prescribe. Such return
49 shall be filed on or before the fifteenth day of the third month follow-
50 ing the close of each taxable year.

51 (d) Information at source. The tax commission may prescribe regu-
52 lations and instructions requiring returns of information to be made and
53 filed on or before February twenty-eighth of each year as to the payment
54 or crediting in any calendar year of amounts of six hundred dollars or
55 more to any taxpayer under this chapter. Such returns may be required of
56 any persons, including lessees or mortgagors of real or personal proper-

1 ty, fiduciaries, employers, and all officers and employees of this
2 state, or of any municipal corporation or political subdivision of this
3 state, having the control, receipt, custody, disposal or payment of
4 interest, rents, salaries, wages, premiums, annuities, compensations,
5 remunerations, emoluments or other fixed or determinable gains, profits
6 or income, except interest coupons payable to bearer. A duplicate of the
7 statement as to tax withheld on wages, required to be furnished by an
8 employer to an employee, shall constitute the return of information
9 required to be made under this section with respect to such wages.

10 (e) Notice of qualification as receiver, etc. Every receiver, trustee
11 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
12 ary shall give notice of his or her qualification as such to the tax
13 commission, as may be required by regulation.

14 (g) Requirements applicable to tax return preparer.

15 (1) Signature of tax return preparer. Any individual who is a tax
16 return preparer and prepares any return or claim for refund, shall sign
17 such return or claim for refund in accordance with regulations or
18 instructions prescribed by the commissioner of taxation and finance.

19 (2) Furnishing identifying numbers. Any return or claim for refund
20 which is prepared by a tax return preparer shall include the identifying
21 number of the preparer required by paragraph one of this subdivision to
22 sign such return or claim for refund. In addition, where such individual
23 preparer is an employee of an employer which is a tax return preparer
24 with respect to such return or claim for refund, or where such preparer
25 is a partner in a partnership which is a tax return preparer with
26 respect to such return or claim for refund, then such return or claim
27 for refund shall also include the identifying number of such employer or
28 partnership. Such identifying numbers shall be as prescribed by the
29 commissioner of taxation and finance in order to secure the proper iden-
30 tification of such individual preparer, partnership or employer. The
31 responsibility for the inclusion of such identifying numbers shall be as
32 set forth in paragraph two of subdivision (t) of section 11-1785 of this
33 chapter.

34 (3) Furnishing copy to taxpayer. Any person who is a tax return
35 preparer with respect to any return or claim for refund shall furnish a
36 completed copy of such return or claim for refund to the taxpayer not
37 later than the time such return or claim for refund is presented for
38 such taxpayer's signature.

39 (4) Copy or list to be retained by tax return preparer. Any person who
40 is a tax return preparer with respect to any return or claim for refund
41 shall for a three year retention period described in paragraph nine of
42 this subdivision:

43 (A) retain a completed copy of such return or claim for refund, or
44 retain, on a list, the name and identification number of the taxpayer
45 for whom such return or claim was prepared, and

46 (B) make such copy or list available for inspection upon request by
47 the commissioner of taxation and finance.

48 (5) Tax return preparer defined. For purposes of this chapter, the
49 term "tax return preparer" means any person who prepares for compen-
50 sation, or who employs or engages one or more persons to prepare for
51 compensation any return or claim for refund. The preparation of a
52 substantial portion of a return or claim for refund shall be treated as
53 if it were the preparation of such return or claim for refund. Where an
54 employer and one or more employees of such employer are tax return
55 preparers with respect to the same return or claim for refund, or where
56 a partnership and one or more partners in such partnership are tax

1 return preparers with respect to the same return or claim for refund,
2 for purposes of paragraphs three and four of this subdivision, such
3 employer or such partnership shall be deemed to be the sole tax return
4 preparer. A person shall not be a "tax return preparer" merely because
5 such person:

6 (A) furnishes typing, reproducing, or other mechanical assistance,

7 (B) prepares a return or claim for refund of the employer, or of an
8 officer or employee of the employer, by whom he or she is regularly and
9 continuously employed, or

10 (C) prepares as a fiduciary a return or claim for refund for any
11 person.

12 (6) Person defined. For purposes of this subdivision, the term
13 "person" includes an individual, corporation, including a dissolved
14 corporation, or partnership.

15 (7) Return defined. For purposes of this subdivision, the term
16 "return" shall mean any return required under this chapter.

17 (8) Claim for refund defined. For purposes of this subdivision, the
18 term "claim for refund" shall mean a claim for refund of or credit
19 against any tax imposed under this chapter, and shall include any claim
20 for refund of any credit treated as an overpayment of tax under this
21 chapter.

22 (9) Retention period defined. For purposes of this subdivision, the
23 term "retention period" shall mean:

24 (A) in the case of a tax return, the period ending the later of three
25 years after the due date of such return, without regard to extensions,
26 or three years after the date such return was presented to the taxpayer
27 for such taxpayer's signature, and

28 (B) in the case of a claim for refund, the period ending three years
29 after such claim for refund was presented to the taxpayer for such
30 taxpayer's signature.

31 (10) Mandatory electronic filing by certain tax return preparers.

32 (A)(i) If a tax return preparer prepared more than two hundred original
33 returns during the calendar year beginning on January first, two thou-
34 sand five, and if, in the calendar year beginning on January first, two
35 thousand six, such tax return preparer prepares one or more authorized
36 returns using tax software, then, for such calendar year two thousand
37 six and for each subsequent calendar year thereafter, all authorized
38 returns prepared by such tax return preparer shall be filed electron-
39 ically, in accordance with instructions prescribed by the commissioner
40 of taxation and finance.

41 (ii) If a tax return preparer prepared more than one hundred original
42 returns during any calendar year beginning on or after January first,
43 two thousand six, and if, in any succeeding calendar year such tax
44 return preparer prepares one or more authorized returns using tax soft-
45 ware, then, for such succeeding calendar year and for each subsequent
46 calendar year thereafter, all authorized returns prepared by such tax
47 return preparer shall be filed electronically, in accordance with
48 instructions prescribed by the commissioner of taxation and finance.

49 (B) For purposes of this paragraph: (i) "Electronic" means computer
50 technology; provided, however, that the commissioner of taxation and
51 finance may, in instructions, provide that use of barcode technology
52 will also satisfy the mandatory electronic filing requirements of this
53 section.

54 (ii) "Authorized return" means any return required under this article
55 which the commissioner of taxation and finance has authorized to be
56 filed electronically.

1 (iii) "Original return" means a return required under this article
2 that is filed, without regard to extensions, during the calendar year
3 for which that return is required to be filed.

4 (iv) "Tax software" means any computer software program intended for
5 tax return preparation purposes.

6 § 11-1759 Report of federal changes, corrections or disallowances. If
7 the amount of a taxpayer's federal taxable income, total taxable amount
8 or ordinary income portion of a lump sum distribution or includible gain
9 of a trust reported on his federal income tax return for any taxable
10 year, or the amount of any claim of right adjustment, is changed or
11 corrected by the United States internal revenue service or other compe-
12 tent authority, or as the result of a renegotiation of a contract or
13 subcontract with the United States or the amount an employer is required
14 to deduct and withhold from wages for federal income tax withholding
15 purposes is changed or corrected by such service or authority or if a
16 taxpayer's claim for credit or refund of federal income tax is disal-
17 lowed in whole or in part, the taxpayer or employer shall report such
18 change or correction or disallowance within ninety days after the final
19 determination of such change, correction, renegotiation, or disallow-
20 ance, or as otherwise required by the commissioner, and shall concede
21 the accuracy of such determination or state wherein it is erroneous. The
22 allowance of a tentative carryback adjustment based upon a net operating
23 loss carryback pursuant to section sixty-four hundred eleven of the
24 internal revenue code shall be treated as a final determination for
25 purposes of this section. Any taxpayer filing an amended federal income
26 tax return and any employer filing an amended federal return of income
27 tax withheld shall also file within ninety days thereafter an amended
28 return under this chapter, and shall give such information as the
29 commissioner may require. The commissioner may by regulation prescribe
30 such exceptions to the requirements of this section as he or she deems
31 appropriate. For purposes of this section, (i) the term "taxpayer" shall
32 include a partnership having a resident partner or having any income
33 derived from New York sources, and a corporation with respect to which
34 the taxable year of such change, correction, disallowance or amendment
35 is a year with respect to which the election provided for in subsection
36 (a) of section six hundred sixty of the tax law is in effect, and (ii)
37 the term "federal income tax return" shall include the returns of income
38 required under sections six thousand thirty-one and six thousand thir-
39 ty-seven of the internal revenue code. In the case of such a corpo-
40 ration, such report shall also include any change or correction of the
41 taxes described in paragraphs two and three of subsection (f) of section
42 thirteen hundred sixty-six of the internal revenue code. Reports made
43 under this section by a partnership or corporation shall indicate the
44 portion of the change in each item of income, gain, loss or deduction,
45 and, in the case of a corporation, of each change in, or disallowance of
46 a claim for credit or refund of such tax, allocable to each partner or
47 shareholder and shall set forth such identifying information with
48 respect to such partner or shareholder as may be prescribed by the
49 commissioner.

50 § 11-1761 Change of election. Any election expressly authorized by
51 this chapter may be changed on such terms and conditions as the tax
52 commission may prescribe by regulation.

53 § 11-1762 Computation of tax where taxpayer restores substantial
54 amount held under claim of right. (a) General. If:

1 (1) an item was included in city adjusted gross income for a prior
2 taxable year, or years, because it appeared that the taxpayer had an
3 unrestricted right to such item, and

4 (2) for the current taxable year the provisions of paragraph five of
5 subsection (a) of section thirteen hundred forty-one of the internal
6 revenue code apply to such item, then the tax imposed by this chapter
7 for the taxable year shall be an amount equal to

8 (3) the tax for the taxable year computed without regard to this
9 section, minus

10 (4) the decrease in tax under this chapter for the prior taxable year,
11 or years, which would result solely from the exclusion of such item, or
12 portion thereof, from city adjusted gross income for such prior taxable
13 year, or years.

14 (b) Special rules. If the decrease in tax ascertained under paragraph
15 four of subdivision (a) of this section exceeds the tax imposed by this
16 chapter for the taxable year, such excess shall be considered a payment
17 of tax on the last day prescribed by law for the payment of tax for the
18 taxable year, and shall be refunded or credited in the same manner as if
19 it were an overpayment for such taxable year.

20 SUBCHAPTER 4
21 WITHHOLDING OF TAX

22 § 11-1771 Requirement of withholding tax from wages. (a) General. (1)
23 Every employer maintaining an office or transacting business within this
24 city or state and making payment on and after January first, nineteen
25 hundred seventy-seven of any wages taxable under this chapter, or under
26 section two of chapter eight hundred eighty-two of the laws of nineteen
27 hundred seventy-five, as amended by chapter eight hundred eighty-six of
28 the laws of nineteen hundred seventy-five, shall deduct and withhold
29 from such wages for each payroll period a tax computed in such manner as
30 to result, so far as practicable, in withholding from the employee's
31 wages during each calendar year an amount substantially equivalent to
32 the tax reasonably estimated to be due under this chapter or such
33 section two resulting from the inclusion in the employee's city adjusted
34 gross income of his or her wages received during such calendar year.
35 The method of determining the amount to be withheld shall be prescribed
36 by regulations of the tax commission, with due regard to the city with-
37 holding exemptions of the employee and the sum of any credits allowable
38 against his or her tax. The section shall not apply to payments by the
39 United States for service in the armed forces of the United States so
40 long as the right to require deduction and withholding of tax from such
41 payments is prohibited by the laws of the United States. Service in the
42 armed forces of the United States shall have the same meaning as when
43 used in a comparable context in the laws of the United States relating
44 to withholding of city income taxes.

45 (2) The tax commission may provide, by regulations, for withholding:

46 (A) from remuneration for services performed by an employee for his or
47 her employer which does not constitute wages, and

48 (B) from remuneration for services performed by an employee for his or
49 her employer which does not constitute wages, and (B) from any other
50 type of payment, with respect to which the tax commission finds that
51 withholding would be appropriate under the provisions of this chapter,
52 if the employer and the employee, or in the case of any other type of
53 payment the person making and the person receiving the payment, agree to
54 such withholding. Such agreement shall be made in such form and manner

1 as the tax commission may by regulations provide. For purposes of this
2 chapter, remuneration or other payments with respect to which such
3 agreement is made shall be treated as if they were wages paid by an
4 employer to an employee to the extent that such remuneration is paid or
5 other payments are made during the period for which the agreement is in
6 effect.

7 (3) The tax commission shall provide by regulation for an exemption
8 from withholding for: (i) employees under eighteen years of age, (ii)
9 employees under twenty-five years of age who are full-time students and
10 (iii) employees over sixty-five years of age, provided such employees
11 had no income tax liability in the prior year and can reasonably antic-
12 ipate none in the current year.

13 (b) Extension of withholding to certain periodic payments and gambling
14 winnings.

15 (1) For purposes of this chapter, any payment subject to withholding,
16 within the meaning of paragraph two of this subdivision, shall be treat-
17 ed as if it were wages paid by an employer to an employee.

18 (2) Payments subject to withholding. For purposes of paragraph one of
19 this subdivision, a payment subject to withholding means:

20 (A) Any supplemental unemployment compensation benefit paid to an
21 individual to the extent includible in such individual's city adjusted
22 gross income.

23 (B) Any member or employee contributions to a retirement system or
24 pension fund picked up by the employer pursuant to subdivision f of
25 section five hundred seventeen or subdivision d of section six hundred
26 thirteen of the retirement and social security law or section 13-225.1,
27 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the code of the preceding
28 municipality or subdivision nineteen of section twenty-five hundred
29 seventy-five of the education law.

30 (C) Any payment of an annuity to an individual to the extent includi-
31 ble in such individual's city adjusted gross income, if at the time the
32 payment is made a request that such annuity be subject to withholding
33 under this chapter is in effect.

34 (D) Any payment of winnings from a wager placed in a lottery conducted
35 by the division of the lottery, if the proceeds from such wager exceed
36 five thousand dollars and such proceeds are payable pursuant to a prize
37 claim made by an individual who was a resident of the city at the time
38 of the selection of the prize winning lottery ticket.

39 (F) Any amount deducted or deferred from an employee's salary under a
40 flexible benefits program established pursuant to section twenty-three
41 of the general municipal law or section one thousand two hundred ten-a
42 of the public authorities law.

43 (G) Any amount by which an employee's salary is reduced pursuant to
44 the provisions of subdivision b of section 12-126.1 and subdivision b of
45 section 12-126.2 of the code of the preceding municipality.

46 (3) Additional provisions applicable to this subdivision.

47 (A) Request for annuity withholding. A request that an annuity be
48 subject to withholding under this chapter shall be made by the payee in
49 writing to the person making the annuity payments.

50 Such a request may, notwithstanding any provision of law to the
51 contrary, be terminated by furnishing to the person making the payments
52 a written statement of termination. Such a request for withholding or
53 statement of termination shall take effect in such manner as the commis-
54 sioner of taxation and finance shall prescribe.

55 (B) Withholding on lottery winnings upon change of residence. If a
56 payee of lottery winnings subject to the provisions of subparagraph (D)

1 of paragraph two of this subdivision changes status from resident to
2 nonresident, withholding in accordance with such subparagraph shall
3 constitute other security acceptable to the commissioner of taxation and
4 finance within the meaning of paragraph four of subdivision (c) of
5 section 11-1754 of this chapter, unless such payee elects, in such
6 manner as the commissioner of taxation and finance shall prescribe, to
7 apply the provisions of paragraph one of such subdivision (c) to the
8 proceeds, in which case withholding under this subdivision shall no
9 longer apply to such proceeds.

10 (C) Proceeds. For purposes of subparagraphs (D) and (E) of paragraph
11 two of this subdivision, proceeds from a wager shall be determined by
12 reducing the amount received by the amount of the wager.

13 (D) Taxes withheld at maximum rate. The tax withheld on any payment
14 subject to withholding under subparagraph (D) or (E) of paragraph two of
15 this subdivision shall be withheld at the highest rate of tax on city
16 taxable income, without any allowance for deductions or exemptions, in
17 effect under this chapter for the taxable year in which the payment is
18 made.

19 (E) Determination of residence. For purposes of applying the
20 provisions of subparagraphs (D) and (E) of paragraph two of this subdivi-
21 sion, any payor of proceeds shall determine the residence of the payee
22 of such proceeds in accordance with regulations or instructions of the
23 commissioner of taxation and finance or, in the absence of any such
24 regulations or instructions, in accordance with the address of the payee
25 required under the provisions of paragraph six of subsection (q) of
26 section thirty-four hundred two of the internal revenue code.

27 (b) Extension of withholding to unemployment compensation benefits,
28 annuity payments, and lottery winnings.

29 (1) For purposes of this chapter:

30 (A) any supplemental unemployment compensation benefit paid to an
31 individual to the extent includible in such individual's city adjusted
32 gross income,

33 (B) any payment of an annuity to an individual to the extent includi-
34 ble in such individual's city adjusted gross income, if at the time the
35 payment is made a request that such annuity be subject to withholding
36 under this chapter is in effect, and

37 (C) any periodic payment (but only where such payment is part of a
38 series of payments extending over a period greater than one year), of
39 lottery winnings by the division of the lottery, if at the time the
40 payment is made a request that such lottery winnings be subject to with-
41 holding under this chapter is in effect, shall be treated as if it were
42 a payment of wages by an employer to an employee for a payroll period.

43 (D) any member or employee contributions to a retirement system or
44 pension fund picked up or paid by the employer for members of the
45 Manhattan and Bronx surface transportation authority pension plan and
46 treated as employer contributions in determining income tax treatment
47 under subdivision (h) of section four hundred fourteen of the Internal
48 Revenue Code.

49 (2) Request for withholding. A request that an annuity be subject to
50 withholding under this chapter shall be made by the payee in writing to
51 the person making the annuity payments, and a request that lottery
52 winnings be subject to withholding under this chapter shall be made by
53 the payee in writing to the division of the lottery, in the manner
54 prescribed by the commissioner of taxation and finance. A request that
55 an annuity be subject to withholding may, notwithstanding any provision
56 of law to the contrary, be terminated by furnishing to the person making

1 the payments a written statement of termination. A request that lottery
2 winnings be subject to withholding under this chapter shall not be revo-
3 cable while the payee is a nonresident, and shall constitute other secu-
4 rity acceptable to the tax commission within the meaning of paragraph
5 four of subdivision (c) of section 11-1754 of this chapter.

6 Such a request for withholding or statement of termination shall take
7 effect in such manner as the commissioner of taxation and finance shall
8 provide by regulation.

9 (c) Withholding exemptions. For purposes of this section:

10 (1) The number of city withholding exemptions which an employee
11 receiving wages taxable under this chapter may claim shall not exceed
12 the number of city exemptions allowed pursuant to the provisions of
13 section 11-1716 of this chapter and such additional city withholding
14 exemptions as may be prescribed by regulations or instructions of the
15 commissioner of taxation and finance, taking into account the applicable
16 standard deduction and such other factors as he or she finds appropri-
17 ate.

18 (2) The amount of each city withholding exemption shall be the amount
19 of the city exemption allowed pursuant to the provisions of section
20 11-1716 of this chapter.

21 (3) Withholding exemption certificate. An employee shall be required
22 to file with his or her employer a withholding exemption certificate in
23 accordance with regulations or instructions prescribed by the commis-
24 sioner of taxation and finance.

25 § 11-1772 Information statement for employee. Every employer required
26 to deduct and withhold tax under this chapter from the wages of an
27 employee, or who would have been required so to deduct and withhold tax
28 if the employee had claimed no more than one withholding exemption,
29 shall furnish to each such employee in respect of the wages paid by such
30 employer to such employee during the calendar year on or before February
31 fifteenth of the succeeding year, or, if his or her employment is termi-
32 nated before the close of such calendar year, within thirty days from
33 the date on which the last payment of the wages is made, a written
34 statement as prescribed by the tax commission showing the amount of
35 wages paid by the employer to the employee, the amount deducted and
36 withheld as tax, and such other information as the tax commission shall
37 prescribe.

38 § 11-1773 Credit for tax withheld. Wages upon which tax is required
39 to be withheld shall be taxable under this chapter as if no withholding
40 were required, but any amount of tax actually deducted and withheld
41 under this chapter in any calendar year shall be deemed to have been
42 paid to the tax commission on behalf of the person from whom withheld,
43 and such person shall be credited with having paid that amount of tax
44 for the taxable year beginning in such calendar year.

45 For a taxable year of less than twelve months, the credit shall be
46 made under regulations of the tax commission.

47 § 11-1774 Employer's return and payment of withheld taxes. (a) Gener-
48 al. Every employer required to deduct and withhold tax under this chap-
49 ter shall file a withholding return and pay over to the tax commission
50 or to a depository designated by the tax commission, the taxes so
51 required to be deducted and withheld, as hereafter prescribed.

52 (1) If, after having made a payroll, an employer has been required to
53 deduct and withhold, but has not paid over, a cumulative aggregate
54 amount of seven hundred dollars or more of tax during a calendar quar-
55 ter, such employer shall file a return and pay over the tax. If an
56 employer was required to remit a cumulative aggregate amount of less

1 than fifteen thousand dollars in withholding tax during the calendar
2 year which precedes the previous calendar year, the tax shall be paid
3 over on or before the fifth business day following the date of making
4 such a payroll. If an employer was required to remit a cumulative aggregate
5 amount more than or equal to fifteen thousand dollars in withholding
6 tax during the calendar year which precedes the previous calendar
7 year, the tax shall be paid over on or before the third business day
8 following the date of making such a payroll. In the case of an "educational
9 organization" as defined in paragraph two of subsection (a) of
10 section nine of the tax law or a "health care provider" as defined in
11 paragraph four of subsection (a) of section nine of the tax law, the tax
12 shall be paid over on or before the fifth business day following the
13 date of making such a payroll.

14 (2) If, at the close of any calendar quarter, an employer has been
15 required to deduct and withhold, but has not paid over, a cumulative
16 aggregate amount of less than seven hundred dollars of tax during such
17 calendar quarter, such employer shall pay over the tax with the quarterly
18 combined withholding, wage reporting and unemployment insurance
19 return required to be filed for such quarter by paragraph four of this
20 subdivision, on or before the last date prescribed by such paragraph for
21 filing such return.

22 (3) If an employer makes more than one payroll per week, then such
23 employer shall determine the applicability of the rules described in
24 paragraphs one and two of this subdivision measured by the last payroll
25 made within the week by such employer; provided, however, that in any
26 week in which the end of a quarter occurs between the making of payrolls
27 by an employer, any tax required to be deducted and withheld in a
28 payroll or payrolls made during such week prior to or on the end of the
29 quarter shall be paid over. If an employer was required to remit a cumulative
30 aggregate amount of less than fifteen thousand dollars in withholding
31 tax during the calendar year preceding the previous calendar
32 year, the tax shall be paid over on or before the fifth business day
33 following the date of making the last payroll in such quarter. If an
34 employer was required to remit a cumulative aggregate amount more than
35 or equal to fifteen thousand dollars in withholding tax during the
36 calendar year preceding the previous calendar year, the tax shall be
37 paid over on or before the third business day following the date of
38 making the last payroll in such quarter. In the case of an "educational
39 organization" as defined in paragraph two of subsection (a) of section
40 nine of the tax law or a "health care provider" as defined in paragraph
41 four of subsection (a) of section nine of the tax law, the tax shall be
42 paid over on or before the fifth business day following the date of
43 making such a payroll. For purposes of this paragraph, the term "week"
44 shall mean the period Sunday through Saturday.

45 (4)(A) All employers described in paragraph one of subdivision (a) of
46 section 11-1771 of this subchapter, including those whose wages paid are
47 not sufficient to require the withholding of tax from the wages of any
48 of their employees, all employers required to provide the wage reporting
49 information for the employees described in subdivision one of section
50 one hundred seventy-one-a of the tax law, and all employers liable for
51 unemployment insurance contributions or for payments in lieu of such
52 contributions pursuant to article eighteen of the labor law, shall file
53 a quarterly combined withholding, wage reporting and unemployment insurance
54 return with the department of taxation and finance detailing the
55 preceding calendar quarter's withholding tax transactions, such quarter's
56 wage reporting information, such quarter's unemployment insurance

1 contributions, and such other related information as the commissioner of
2 taxation and finance or the commissioner of labor, as applicable, may
3 prescribe. In addition, the return covering the last calendar quarter of
4 each year shall also include withholding reconciliation information for
5 such calendar year. Such returns shall be filed no later than the last
6 day of the month following the last day of each calendar quarter;
7 provided, however, that an employer may provide the wage reporting
8 information covering the last calendar quarter of each year, and the
9 withholding reconciliation information for such year no later than
10 February twenty-eighth of the succeeding year.

11 (B) An employer shall, at the time prescribed by subparagraph (A) of
12 this paragraph for filing each quarterly combined withholding, wage
13 reporting and unemployment insurance return, pay over, in a single
14 remittance, the unemployment insurance contributions and aggregate with-
15 holding taxes required to be paid over with such return.

16 Notwithstanding any provision of law to the contrary, an overpayment
17 of unemployment insurance contributions or of aggregate withholding
18 taxes made by an employer with the quarterly combined withholding, wage
19 reporting and unemployment insurance return for a calendar quarter may
20 be only credited by such employer against such employer's liability for
21 unemployment insurance contributions or aggregate withholding taxes,
22 respectively.

23 (5) The tax commission may, if it believes such action necessary for
24 the protection of the revenues, require any employer to make such return
25 and pay to it the tax deducted and withheld at any time, or from time to
26 time.

27 (6) "Aggregate amount" as used in paragraphs one, two and three of
28 this subdivision means the aggregate of the aggregate amounts of New
29 York state personal income tax, city personal income tax on residents
30 and city earnings tax on nonresidents authorized to be deducted and
31 withheld.

32 (b) Deposit in trust for tax commission. Whenever any employer fails
33 to collect, truthfully account for, pay over the tax, or make returns of
34 the tax as required in this section, the tax commission may serve a
35 notice requiring such employer to collect the taxes which become collec-
36 tible after service of such notice, to deposit such taxes in a bank
37 approved by the tax commission, in a separate account, in trust for and
38 payable to the tax commission, and to keep the amount of such tax in
39 such account until payment over to the tax commission. Such notice
40 shall remain in effect until a notice of cancellation is served by the
41 tax commission.

42 § 11-1775 Employer's liability for withheld taxes. Every employer
43 required to deduct and withhold tax under this chapter is hereby made
44 liable for such tax. For purposes of assessment and collection, any
45 amount required to be withheld and paid over to the tax commission, and
46 any additions to tax, penalties and interest with respect thereto, shall
47 be considered the tax of the employer. Any amount of tax actually
48 deducted and withheld under this chapter shall be held to be a special
49 fund in trust for the tax commission. No employee shall have any right
50 of action against his or her employer in respect to any moneys deducted
51 and withheld from his or her wages and paid over to the tax commission
52 in compliance or in intended compliance with this chapter.

53 § 11-1776 Employer's failure to withhold. If an employer fails to
54 deduct and withhold tax as required, and thereafter the tax against
55 which such tax may be credited is paid, the tax so required to be
56 deducted and withheld shall not be collected from the employer, but the

1 employer shall not be relieved from liability for any penalties, inter-
2 est, or additions to the tax otherwise applicable in respect of such
3 failure to deduct and withhold.

4 § 11-1777 Designation of third parties to perform acts required of
5 employers. In case a fiduciary, agent, or other person has the control,
6 receipt, custody, or disposal of, or pays the wages of an employee or
7 group of employees, employed by one or more employers, the tax commis-
8 sion, under regulations promulgated by it, is authorized to designate
9 such fiduciary, agent, or other person to perform such acts as are
10 required of employers under this chapter and as the tax commission may
11 specify. Except as may be otherwise prescribed by the tax commission,
12 all provisions of law, including penalties, applicable in respect of an
13 employer shall be applicable to a fiduciary, agent, or other person so
14 designated but, except as so provided, the employer for whom such fidu-
15 ciary, agent, or other person acts shall remain subject to the
16 provisions of law, including penalties, applicable in respect of employ-
17 ers.

18 § 11-1778 Liability of third parties paying or providing for wages.

19 (a) Direct payment by third party. If a lender, surety or other person,
20 who is not an employer with respect to an employee or group of employ-
21 ees, pays wages directly to such an employee or group of employees,
22 employed by one or more employers, or to an agent on behalf of such
23 employee or employees, such lender, surety or other person shall be
24 liable for the amount of taxes, together with interest, required to be
25 deducted and withheld from such wages by the employer.

26 (b) Funds supplied to employer by third parties. If a lender, surety
27 or other person supplies funds to or for the account of an employer for
28 the specific purpose of paying wages of the employees of such employer,
29 with actual notice or knowledge that such employer does not intend to or
30 will not be able to make timely payment or deposit of the amounts of tax
31 required by this chapter to be deducted and withheld by such employer
32 from such wages, such lender, surety or other person shall be liable for
33 the amount of the taxes, together with interest, which are not paid over
34 to the tax commission by such employer with respect to such wages.
35 However, the liability of such lender, surety or other person shall be
36 limited to an amount equal to twenty-five percent of the amount so
37 supplied to or for the account of such employer for such purpose.

38 (c) Effect of payment. Any amounts paid to the tax commission pursuant
39 to this section shall be credited against the liability of the employer.

40 SUBCHAPTER 5

41 PROCEDURE AND ADMINISTRATION

42 § 11-1781 Notice of deficiency. (a) General. If upon examination of a
43 taxpayer's return under this chapter the tax commission determines that
44 there is a deficiency of income tax, it may mail a notice of deficiency
45 to the taxpayer. If a taxpayer fails to file an income tax return
46 required under this chapter, the tax commission is authorized to esti-
47 mate the taxpayer's city taxable income and tax thereon, from any infor-
48 mation in its possession, and to mail a notice of deficiency to the
49 taxpayer. A notice of deficiency shall be mailed by certified or regis-
50 tered mail to the taxpayer at his or her last known address in or out of
51 this state. If a husband and wife are jointly liable for tax, a notice
52 of deficiency may be a single joint notice, except that if the tax
53 commission has been notified by either spouse that separate residences
54 have been established, then, in lieu of the single joint notice, a
55 duplicate original of the joint notice shall be mailed to each spouse at
56 his or her last known address in or out of this state. If the taxpayer

1 is deceased or under a legal disability, a notice of deficiency may be
2 mailed to his or her last known address in or out of this state, unless
3 the tax commission has received notice of the existence of a fiduciary
4 relationship with respect to the taxpayer.

5 (b) Notice of deficiency as assessment. After ninety days from the
6 mailing of a notice of deficiency, such notice shall be an assessment of
7 the amount of tax specified in such notice, together with the interest,
8 additions to tax and penalties stated in such notice, except only for
9 any such tax or other amounts as to which the taxpayer has within such
10 ninety day period filed with the tax commission a petition under section
11 11-1789 of this subchapter. If the notice of deficiency is addressed to
12 a person outside of the United States, such period shall be one hundred
13 fifty days instead of ninety days.

14 (c) Restrictions on assessment and levy. No assessment of a deficiency
15 in tax and no levy or proceeding in court for its collection shall be
16 made, begun or prosecuted, except as otherwise provided in section
17 11-1794 of this subchapter, until a notice of deficiency has been mailed
18 to the taxpayer, nor until the expiration of the time for filing a peti-
19 tion contesting such notice, nor, if a petition with respect to the
20 taxable year has been filed with the tax commission, until the decision
21 of the tax commission has become final. For exception in the case of
22 judicial review of the decision of the tax commission, see subdivision
23 (c) of section 11-1790 of this subchapter.

24 (d) Exceptions for mathematical errors. If a mathematical error
25 appears on a return, including an overstatement of the credit for income
26 tax withheld at the source, or of the amount paid as estimated income
27 tax, the tax commission shall notify the taxpayer that an amount of tax
28 in excess of that shown upon the return is due, and that such excess has
29 been assessed. Such notice shall not be considered as a notice of defi-
30 ciency for the purposes of this section, subdivision (f) of section
31 11-1787 of this subchapter, limiting credits or refunds after petition
32 to the tax commission, or subdivision (b) of section 11-1789 of this
33 subchapter, authorizing the filing of a petition with the tax commission
34 based on a notice of deficiency, nor shall such assessment or collection
35 be prohibited by the provisions of subdivision (c) of this section.

36 (e) Exceptions where federal changes, corrections or disallowances are
37 not reported. (1) If the taxpayer or employer fails to comply with
38 section 11-1759 of this chapter, instead of the mode and time of assess-
39 ment provided for in subdivision (b) of this section, the tax commission
40 may assess a deficiency based upon such federal change, correction or
41 disallowance by mailing to the taxpayer a notice of additional tax due
42 specifying the amount of the deficiency, and such deficiency, together
43 with the interest, additions to tax and penalties stated in such notice,
44 shall be deemed assessed on the date such notice is mailed unless within
45 thirty days after the mailing of such notice a report of the federal
46 change, correction or disallowance or an amended return, where such
47 return was required by section 11-1759 of this chapter, is filed accom-
48 panied by a statement showing wherein such federal determination and
49 such notice of additional tax due are erroneous.

50 (2) Such notice shall not be considered as a notice of deficiency for
51 the purposes of this section, subdivision (f) of section 11-1787 of this
52 subchapter, limiting credits or refunds after petition to the tax
53 commission, or subdivision (b) of section 11-1789 of this subchapter,
54 authorizing the filing of a petition with the tax commission based on a
55 notice of deficiency, nor shall such assessment or the collection there-
56 of be prohibited by the provisions of subdivision (c) of this section.

1 (3) If a husband and wife are jointly liable for tax, a notice of
2 additional tax due may be a single joint notice, except that if the tax
3 commission has been notified by either spouse that separate residences
4 have been established, then, in lieu of the joint notice, a duplicate
5 original of the joint notice shall be mailed to each spouse at his or
6 her last known address in or out of this state. If the taxpayer is
7 deceased or under a legal disability, a notice of additional tax due may
8 be mailed to his or her last known address in or out of this state,
9 unless the tax commission has received notice of the existence of a
10 fiduciary relationship with respect to the taxpayer.

11 (f) Waiver of restrictions. The taxpayer shall at any time, whether or
12 not a notice of deficiency has been issued, have the right to waive the
13 restrictions on assessment and collection of the whole or any part of
14 the deficiency by a signed notice in writing filed with the tax commis-
15 sion.

16 (g) Deficiency defined. For purposes of this chapter, a deficiency
17 means the amount of the tax imposed by this chapter, less (i) the amount
18 shown as the tax upon the taxpayer's return, whether the return was made
19 or the tax computed by such taxpayer or by the tax commission, and less
20 (ii) the amounts previously assessed, or collected without assessment,
21 as a deficiency and plus (iii) the amount of any rebates. For the
22 purpose of this definition, the tax imposed by this chapter and the tax
23 shown on the return shall both be determined without regard to payments
24 on account of estimated tax or the credit for withholding tax; and a
25 rebate means so much of an abatement, credit, refund or other repayment,
26 whether or not erroneous, made on the ground that the amounts entering
27 into the definition of a deficiency showed a balance in favor of the
28 taxpayer.

29 § 11-1782 Assessment. (a) Assessment date. The amount of tax which a
30 return shows to be due, or the amount of tax which a return would have
31 shown to be due but for a mathematical error, shall be deemed to be
32 assessed on the date of filing of the return, including any amended
33 return showing an increase of tax. In the case of a return properly
34 filed without computation of tax, the tax computed by the tax commission
35 shall be deemed to be assessed on the date on which payment is due. If
36 a notice of deficiency has been mailed, the amount of the deficiency
37 shall be deemed to be assessed on the date specified in subdivision (b)
38 of section 11-1781 of this subchapter if no petition to the tax commis-
39 sion is filed, or if a petition is filed, then upon the date when a
40 decision of the tax commission establishing the amount of the deficiency
41 becomes final. If an amended return or report filed pursuant to section
42 11-1759 of this chapter concedes the accuracy of a federal change or
43 correction, any deficiency in tax under this chapter resulting therefrom
44 shall be deemed to be assessed on the date of filing such report or
45 amended return, and such assessment shall be timely notwithstanding
46 section 11-1783 of this subchapter. If a notice of additional tax due,
47 as prescribed in subdivision (e) of section 11-1781 of this subchapter,
48 has been mailed, the amount of the deficiency shall be deemed to be
49 assessed on the date specified in such subdivision unless within thirty
50 days after the mailing of such notice a report of the federal change or
51 correction or an amended return, where such return was required by
52 section 11-1759 of this chapter, is filed accompanied by a statement
53 showing wherein such federal determination and such notice of additional
54 tax due are erroneous. Any amount paid as a tax or in respect of a tax,
55 other than amounts withheld at the source or paid as estimated income

1 tax, shall be deemed to be assessed upon the date of receipt of payment,
2 notwithstanding any other provisions.

3 (b) Other assessment powers. If the mode or time for the assessment of
4 any tax under this chapter, including interest, additions to tax and
5 assessable penalties, is not otherwise provided for, the tax commission
6 may establish the same by regulations.

7 (c) Estimated income tax. No unpaid amount of estimated tax shall be
8 assessed.

9 (d) Omission of income, item of tax preference, total taxable amount
10 or ordinary income portion of a lump sum distribution on return. The tax
11 may be assessed at any time within six years after the return was filed
12 if: (1) an individual omits from his city adjusted gross income, the
13 sum of his items of tax preference, or the total taxable amount or ordi-
14 nary income portion of a lump sum distribution an amount properly inclu-
15 dible therein which is in excess of twenty-five percent of the amount of
16 city adjusted gross income, the sum of the items of tax preference or
17 the total taxable amount or ordinary income portion of a lump sum
18 distribution stated in the return, or (2) an estate or trust omits from
19 its city adjusted gross income, the sum of its items of tax preference,
20 or the total taxable amount or ordinary income portion of a lump sum
21 distribution an amount properly includible therein which is in excess of
22 twenty-five percent of the amount stated in the return of city adjusted
23 gross income, or the sum of the items of tax preference, or the total
24 taxable amount or ordinary income portion of a lump sum distribution,
25 respectively. For purposes of this paragraph, city adjusted gross income
26 means New York adjusted gross income as determined under paragraph four
27 of subsection (e) of section six hundred one of the tax law.

28 For purposes of this subdivision there shall not be taken into account
29 any amount which is omitted in the return if such amount is disclosed in
30 the return, or in a statement attached to the return, in a manner
31 adequate to apprise the commissioner of the nature and amount of the
32 item of income, tax preference, the total taxable amount or ordinary
33 income portion of a lump sum distribution.

34 (e) Cross reference. For assessment in case of jeopardy, see section
35 11-1794 of this subchapter.

36 § 11-1783 Limitations on assessment. (a) General. Except as otherwise
37 provided in this section, any tax under this chapter shall be assessed
38 within three years after the return was filed, whether or not such
39 return was filed on or after the date prescribed.

40 (b) Time return deemed filed.

41 (1) Early return. For purposes of this section a return of income tax,
42 except withholding tax, filed before the last day prescribed by law or
43 by regulations promulgated pursuant to law for the filing thereof, shall
44 be deemed to be filed on such last day.

45 (2) Return of withholding tax. For purposes of this section, if a
46 return of withholding tax for any period ending with or within a calen-
47 dar year is filed before April fifteenth of the succeeding calendar
48 year, such return shall be deemed to be filed on April fifteenth of such
49 succeeding calendar year.

50 (c) Exceptions.

51 (1) Assessment at any time. The tax may be assessed at any time if:

52 (A) no return is filed,

53 (B) a false or fraudulent return is filed with intent to evade tax, or

54 (C) the taxpayer or employer fails to comply with section 11-1759 of
55 this chapter.

1 (2) Extension by agreement. Where, before the expiration of the time
2 prescribed in this section for the assessment of tax, both the tax
3 commission and the taxpayer have consented in writing to its assessment
4 after such time, the tax may be assessed at any time prior to the expi-
5 ration of the period agreed upon. The period so agreed upon may be
6 extended by subsequent agreements in writing made before the expiration
7 of the period previously agreed upon.

8 (3) Report of federal changes, corrections or disallowances. If the
9 taxpayer or employer complies with section 11-1759 of this chapter, the
10 assessment, if not deemed to have been made upon the filing of the
11 report or amended return, may be made at any time within two years after
12 such report or amended return was filed. The amount of such assessment
13 of tax shall not exceed the amount of the increase in city tax attribut-
14 able to such federal change or correction. The provisions of this para-
15 graph shall not affect the time within which or the amount for which an
16 assessment may otherwise be made.

17 (4) Deficiency attributable to net operating loss carryback. If a
18 deficiency is attributable to the application to the taxpayer of a net
19 operating loss carryback, it may be assessed at any time that a defi-
20 ciency for the taxable year of the loss may be assessed.

21 (5) Recovery of erroneous refund. An erroneous refund shall be consid-
22 ered an underpayment of tax on the date made, and an assessment of a
23 deficiency arising out of an erroneous refund may be made at any time
24 within two years from the making of the refund, except that the assess-
25 ment may be made within five years from the making of the refund if it
26 appears that any part of the refund was induced by fraud or misrepresen-
27 tation of a material fact.

28 (6) Request for prompt assessment. If a return is required for a dece-
29 dent or for a decedent's estate during the period of administration, the
30 tax shall be assessed within eighteen months after written request
31 therefor, made after the return is filed, by the executor, administrator
32 or other person representing the estate of such decedent, but not more
33 than three years after the return was filed, except as otherwise
34 provided in this subdivision and subdivision (d) of this section.

35 (7) Report on use of certain property. Under the circumstances
36 described in paragraph two of subdivision (g) of section 11-1712 of this
37 chapter, the tax may be assessed within three years after the filing of
38 a return reporting that property has been used for purposes other than
39 research and development to a greater extent than originally reported.

40 (8) Report concerning waste treatment facility, air pollution control
41 facility or eligible business facility. Under the circumstances
42 described in paragraph three of subdivision (h) of section 11-1712 of
43 this chapter, the tax may be assessed within three years after filing of
44 the return containing the information required by such paragraph, or, if
45 a certificate of compliance in respect to an air pollution control
46 facility shall be revoked, within three years after the tax commission
47 shall receive notice of such revocation from the taxpayer or as required
48 by section 19-0309 of the environmental conservation law, whichever
49 notice is received earlier.

50 (9) Except as otherwise provided in paragraph three of this subdivi-
51 sion, or as otherwise provided in this section where a longer period of
52 time may apply, if a taxpayer files an amended return, an assessment of
53 tax, if not deemed to have been made upon the filing of the amended
54 return, including recovery of a previously paid refund, attributable to
55 a change or correction on the amended return from a prior return may be
56 made at any time within one year after such amended return is filed.

1 (d) Omission of income, total taxable amount or ordinary income
2 portion of a lump sum distribution on return. The tax may be assessed at
3 any time within six years after the return was filed if:

4 (1) an individual omits from his city adjusted gross income the total
5 taxable amount or ordinary income portion of a lump sum distribution an
6 amount properly includible therein which is in excess of twenty-five
7 percent of the amount of city adjusted gross income or the total taxable
8 amount or ordinary income portion of a lump sum distribution stated in
9 the return, or

10 (2) an estate or trust omits from its city adjusted gross income, or
11 the total taxable amount or ordinary income portion of a lump sum
12 distribution an amount properly includible therein which is in excess of
13 twenty-five percent of the amount stated in the return of city adjusted
14 gross income, or the total taxable amount or ordinary income portion of
15 a lump sum distribution, respectively. For purposes of this paragraph,
16 city adjusted gross income means New York adjusted gross income as
17 determined under paragraph four of subsection (e) of section six hundred
18 one of the tax law.

19 For purposes of this subdivision there shall not be taken into account
20 any amount which is omitted in the return if such amount is disclosed in
21 the return, or in a statement attached to the return, in a manner
22 adequate to apprise the commissioner of the nature and amount of the
23 item of income, the total taxable amount or ordinary income portion of a
24 lump sum distribution.

25 (e) Suspension of running of period of limitation. The running of the
26 period of limitations on assessment or collection of tax or other
27 amount, or of a transferee's liability, shall, after the mailing of a
28 notice of deficiency, be suspended for the period during which the tax
29 commission is prohibited under subdivision (c) of section 11-1781 of
30 this subchapter from making the assessment or from collecting by levy.

31 § 11-1784 Interest on underpayment. (a) General. If any amount of
32 income tax is not paid on or before the last date prescribed in this
33 chapter for payment, interest on such amount at the underpayment rate
34 set by the commissioner of taxation and finance pursuant to section
35 11-1797 of this subchapter, or if no rate is set, at the rate of seven
36 and one-half percent per annum shall be paid for the period from such
37 last date to the date paid, whether or not any extension of time for
38 payment was granted. Interest under this subdivision shall not be paid
39 if the amount thereof is less than one dollar. If the time for filing of
40 a return of tax withheld by an employer is extended, the employer shall
41 pay interest for the period for which the extension is granted and may
42 not charge such interest to the employee.

43 (b) Exception as to estimated tax. This section shall not apply to any
44 failure to pay estimated tax.

45 (c) Exception for mathematical error. No interest shall be imposed on
46 any underpayment of tax due solely to mathematical error if the taxpayer
47 files a return within the time prescribed in this chapter, including any
48 extension of time, and pays the amount of underpayment within three
49 months after the due date of such return, as it may be extended.

50 (d) Suspension of interest on deficiencies. If a waiver of
51 restrictions on assessment of a deficiency has been filed by the taxpay-
52 er, and if notice and demand by the tax commission for payment of such
53 deficiency is not made within thirty days after the filing of such waiv-
54 er, interest shall not be imposed on such deficiency for the period
55 beginning immediately after such thirtieth day and ending with the date
56 of notice and demand.

1 (e) Tax reduced by carryback. If the amount of tax for any taxable
2 year is reduced by reason of a carryback of a net operating loss, such
3 reduction in tax shall not affect the computation of interest under this
4 section for the period ending with the filing date for the taxable year
5 in which the net operating loss arises. Such filing date shall be deter-
6 mined without regard to extensions of time to file.

7 (f) Interest treated as tax. Interest under this section shall be paid
8 upon notice and demand and shall be assessed, collected and paid in the
9 same manner as income tax. Any reference in this chapter to the tax
10 imposed by this chapter shall be deemed also to refer to interest
11 imposed by this section on such tax.

12 (g) Interest on penalties or additions to tax. Interest shall be
13 imposed under subdivision (a) of this section in respect of any assessa-
14 ble penalty or addition to tax only if such assessable penalty or addi-
15 tion to tax is not paid within twenty-one calendar days from the date of
16 the notice and demand therefor under subdivision (b) of section 11-1792
17 of this subchapter, ten business days if the amount for which such
18 notice and demand is made equals or exceeds one hundred thousand
19 dollars, and in such case interest shall be imposed only for the period
20 from such date of the notice and demand to the date of payment.

21 (h) Payment within specified period after notice and demand. If notice
22 and demand is made for payment of any amount under subdivision (b) of
23 section 11-1792 of this subchapter, and if such amount is paid within
24 twenty-one calendar days, ten business days if the amount for which such
25 notice and demand is made equals or exceeds one hundred thousand
26 dollars, after the date of such notice and demand, interest under this
27 section on the amount so paid shall not be imposed for the period after
28 the date of such notice and demand.

29 (i) Limitation on assessment and collection. Interest prescribed under
30 this section may be assessed and collected, at any time during the peri-
31 od within which the tax or other amount to which such interest relates
32 may be assessed and collected, respectively.

33 (j) Interest on erroneous refund. Any portion of tax or other amount
34 which has been erroneously refunded, and which is recoverable by the
35 commissioner of taxation and finance, shall bear interest at the under-
36 payment rate set by such commissioner pursuant to section 11-1797 of
37 this subchapter, or if no rate is set, at the rate of seven and one-half
38 percent per annum from the date of the payment of the refund, but only
39 if it appears that any part of the refund was induced by fraud or a
40 misrepresentation of a material fact.

41 (k) Satisfaction by credits. If any portion of a tax is satisfied by
42 credit of an overpayment, then no interest shall be imposed under this
43 section on the portion of the tax so satisfied for any period during
44 which, if the credit had not been made, interest would have been allow-
45 able with respect to such overpayment.

46 § 11-1785 Additions to tax and civil penalties. (a) (1) Failure to
47 file tax return. (A) In case of failure to file a tax return under this
48 chapter on or before the prescribed date, determined with regard to any
49 extension of time for filing, unless it is shown that such failure is
50 due to reasonable cause and not due to willful neglect, there shall be
51 added to the amount required to be shown as tax on such return five
52 percent of the amount of such tax if the failure is for not more than
53 one month, with an additional five percent for each additional month or
54 fraction thereof during which such failure continues, not exceeding
55 twenty-five percent in the aggregate.

1 (B) In the case of a failure to file a return of tax within sixty days
2 of the date prescribed for filing of such return, determined with regard
3 to any extension of time for filing, unless it is shown that such fail-
4 ure is due to reasonable cause and not due to willful neglect, the addi-
5 tion to tax hereunder shall not be less than the lesser of one hundred
6 dollars or one hundred percent of the amount required to be shown as tax
7 on such return.

8 (C) For purposes of this paragraph, the amount of tax required to be
9 shown on the return shall be reduced by the amount of any part of the
10 tax which is paid on or before the date prescribed for payment of the
11 tax and by the amount of any credit against the tax which may be claimed
12 upon the return.

13 (2) Failure to pay tax shown on return. In case of failure to pay the
14 amounts shown as tax on any return required to be filed under this chap-
15 ter on or before the prescribed date, determined with regard to any
16 extension of time for payment, unless it is shown that such failure is
17 due to reasonable cause and not due to willful neglect, there shall be
18 added to the amount shown as tax on such return one-half of one percent
19 of the amount of such tax if the failure is not for more than one month,
20 with an additional one-half of one percent for each additional month or
21 fraction thereof during which such failure continues, not exceeding
22 twenty-five percent in the aggregate. For the purpose of computing the
23 addition for any month, the amount of tax shown on the return shall be
24 reduced by the amount of any part of the tax which is paid on or before
25 the beginning of such month and by the amount of any credit against the
26 tax which may be claimed upon the return. If the amount of tax required
27 to be shown on a return is less than the amount shown as tax on such
28 return, this paragraph shall be applied by substituting such lower
29 amount.

30 (3) Failure to pay tax required to be shown on return. In case of
31 failure to pay any amount in respect of any tax required to be shown on
32 a return required to be filed under this chapter which is not so shown,
33 including an assessment made pursuant to subdivision (a) of section
34 11-1782 of this subchapter, within twenty-one calendar days of the date
35 of a notice and demand therefor, ten business days if the amount for
36 which such notice and demand is made equals or exceeds one hundred thou-
37 sand dollars, unless it is shown that such failure is due to reasonable
38 cause and not due to willful neglect, there shall be added to the amount
39 of tax stated in such notice and demand one-half of one percent of such
40 tax if the failure is not for more than one month, with an additional
41 one-half of one percent for each additional month or fraction thereof
42 during which such failure continues, not exceeding twenty-five percent
43 in the aggregate. For the purpose of computing the addition for any
44 month, the amount of tax stated in the notice and demand shall be
45 reduced by the amount of any part of the tax which is paid before the
46 beginning of such month.

47 (4) Limitations on additions. (A) With respect to any return, the
48 amount of the addition under paragraph one of this subdivision shall be
49 reduced by the amount of the addition under paragraph two of this subdivi-
50 sion for any month to which an addition applies under both paragraphs
51 one and two of this subdivision. In any case described in subparagraph
52 (B) of such paragraph one of this subdivision, the amount of the addi-
53 tion under such paragraph one shall not be reduced below the amount
54 provided in such subparagraph.

55 (B) With respect to any return, the maximum amount of the addition
56 permitted under paragraph three of this subdivision shall be reduced by

1 the amount of the addition under paragraph one of this subdivision,
2 determined without regard to subparagraph (B) of such paragraph, which
3 is attributable to the tax for which the notice and demand is made and
4 which is not paid within ten days of such notice and demand.

5 (b) Deficiency due to negligence. (1) If any part of a deficiency is
6 due to negligence or intentional disregard of this chapter or rules or
7 regulations established pursuant to such chapter, but without intent to
8 defraud, there shall be added to the tax an amount equal to five percent
9 of the deficiency.

10 (2) There shall be added to the tax, in addition to the amount deter-
11 mined under paragraph one of this subdivision, an amount equal to fifty
12 percent of the interest payable under section 11-1784 of this subchapter
13 with respect to the portion of the underpayment described in such para-
14 graph one which is attributable to the negligence or intentional disre-
15 gard referred to in such paragraph, for the period beginning on the last
16 date prescribed by law for payment of such underpayment, determined
17 without regard to any extension, and ending on the date of the assess-
18 ment of the tax, or, if earlier, the date of the payment of the tax.

19 (3) If any payment is shown on a return made by a payor with respect
20 to dividends, patronage dividends and interest under subsection (a) of
21 section six thousand forty-two, subsection (a) of section six thousand
22 forty-four or subsection (a) of section six thousand forty-nine of the
23 internal revenue code, respectively, and the payee fails to include any
24 portion of such payment in city adjusted gross income, any portion of an
25 underpayment attributable to such failure shall be treated, for purposes
26 of this subdivision, as due to negligence in the absence of clear and
27 convincing evidence to the contrary. If any penalty is imposed under
28 this subdivision by reason of this paragraph, the amount of the penalty
29 imposed by paragraph one of this subdivision shall be five percent of
30 the portion of the underpayment which is attributable to the failure
31 described in this paragraph.

32 (c) Failure by individual to pay estimated income tax. (1) Addition
33 to the tax. Except as otherwise provided in this subdivision and subdivi-
34 sion (d) of this section, in the case of any underpayment of estimated
35 tax by an individual, there shall be added to the tax under this chapter
36 for the taxable year an amount determined by applying the underpayment
37 rate established under section 11-1797 of this subchapter, or if no rate
38 is set, at the rate of seven and one-half percent per annum, to the
39 amount of the underpayment for the period of the underpayment. Such
40 period shall run from the due date for the required installment to the
41 earlier of the fifteenth day of the fourth month following the close of
42 the taxable year or, with respect to any portion of the underpayment,
43 the date on which such portion is paid. For purposes of determining such
44 date, a payment of estimated tax shall be credited against unpaid
45 required installments in the order in which such installments are
46 required to be paid. There shall be four required installments for each
47 taxable year, due on April fifteenth, June fifteenth and September
48 fifteenth of such taxable year and on January fifteenth of the following
49 taxable year.

50 (2) Amount of underpayment. For purposes of paragraph one of this
51 subdivision, the amount of the underpayment shall be the excess of the
52 required installment over the amount, if any, of the installment paid on
53 or before the due date for the installment.

54 (3) Required installment. (A) Except as provided in paragraph four of
55 this subdivision, the amount of any required installment shall be twenty-
56 ty-five percent of the required annual payment.

1 (B) The required annual payment is the lesser of
2 (i) ninety percent of the tax shown on the return for the taxable
3 year, or, if no return is filed, ninety percent of the tax for such
4 year, or
5 (ii) one hundred percent of the tax shown on the return of the indi-
6 vidual for the preceding taxable year. Provided, however, that the tax
7 shown on such return for taxable years beginning in two thousand eight
8 shall be calculated as if paragraph three of subdivision (f) of section
9 11-1715 of this chapter was in effect for taxable years beginning in two
10 thousand eight. Provided, however, that the tax shown on such return for
11 taxable years beginning in two thousand nine shall be calculated as if
12 paragraph two of subdivision (g) of section 11-1715 of this chapter was
13 in effect for taxable years beginning in two thousand nine.

14 Clause (ii) of this subparagraph shall not apply if the preceding
15 taxable year was not a taxable year of twelve months or if the individ-
16 ual did not file a return for such preceding taxable year.

17 (C) Limitation on use of preceding year's tax.

18 (i) General. If the city adjusted gross income shown on the return of
19 the individual for the preceding taxable year exceeds one hundred fifty
20 thousand dollars, clause (ii) of subparagraph (B) of this paragraph
21 shall be applied by substituting "one hundred ten percent" for "one
22 hundred percent".

23 (ii) Separate returns. In the case of a husband and wife who file
24 separate returns pursuant to subdivision (b) of section 11-1751 of this
25 chapter for the taxable year for which the amount of the installment is
26 being determined, clause (i) of this subparagraph shall be applied by
27 substituting "seventy-five thousand dollars" for "one hundred fifty
28 thousand dollars".

29 (4) Annualized income installment. (A) In general. In the case of
30 any required installment, if the individual establishes that the annual-
31 ized income installment determined under subparagraph (B) of this para-
32 graph is less than the amount determined under paragraph three of this
33 subdivision, the annualized income installment shall be the required
34 installment. Any reduction in a required installment resulting from the
35 application of this subparagraph shall be recaptured by increasing the
36 amount of the next required installment determined under paragraph three
37 of this subdivision by the amount of such reduction, and by increasing
38 successive required installments as necessary to effect full recapture.

39 (B) Determination of annualized income installment. In the case of
40 any required installment, the annualized income installment is the
41 excess, if any, of an amount equal to the applicable percentage of the
42 tax for the taxable year computed by placing on an annualized basis the
43 taxable income for months in the taxable year ending before the due date
44 for the installment, over the aggregate amount of any prior required
45 installments for the taxable year. The applicable percentage of the tax
46 shall be twenty-two and one-half percent in the case of the first
47 installment, forty-five percent in the case of the second installment,
48 sixty-seven and one-half percent in the case of the third installment
49 and ninety percent in the case of the fourth installment, and shall be
50 computed without regard to any increase in the rates applicable to the
51 taxable year unless such increase was enacted at least thirty days prior
52 to the due date of the installment.

53 (5) Definitions and special rules. (A) Definition of the term tax
54 and application of credits against tax. For purposes of this subdivi-
55 sion and subdivision (d) of this section, the term "tax" means the tax
56 imposed under this chapter minus the credits against tax allowed under

1 this chapter, other than the credit under section 11-1773 of this chap-
2 ter, relating to tax withheld on wages. The credit allowed under
3 section 11-1773 of this chapter for the taxable year shall be deemed a
4 payment of estimated tax, and an equal part of such amount shall be
5 deemed paid on each installment due date for such taxable year, unless
6 the taxpayer establishes the dates on which all amounts were actually
7 withheld, in which case the amounts so withheld shall be deemed payments
8 of estimated tax on the dates on which such amounts were actually with-
9 held.

10 (B) Special rule where return filed on or before January thirty-first.
11 If, on or before January thirty-first of the following taxable year,
12 the taxpayer files a return for the taxable year and pays in full the
13 amount computed on the return as payable, then no addition to tax shall
14 be imposed under paragraph one of this subdivision with respect to any
15 underpayment of the fourth required installment for the taxable year.

16 (C) Special rules for farmers and fishermen. For purposes of this
17 subdivision, if an individual is a farmer or fisherman for any taxable
18 year there shall be only one required installment for the taxable year,
19 due on January fifteenth of the following taxable year in an amount
20 equal to the required annual payment determined under paragraph three of
21 this subdivision by substituting sixty-six and two-thirds percent for
22 ninety percent and without regard to subparagraph (C) of paragraph three
23 of this subdivision. Subparagraph (B) of this paragraph shall be applied
24 by substituting March first for January thirty-first and by treating the
25 required installment under this subparagraph as the fourth required
26 installment. An individual is a farmer or fisherman for any taxable year
27 if the individual's federal gross income from farming or fishing,
28 including oyster farming, for the taxable year is at least two-thirds of
29 the total federal gross income from all sources for the taxable year or
30 if such individual's federal gross income from farming or fishing,
31 including oyster farming, shown on the return of the individual for the
32 preceding taxable year is at least two-thirds of the total federal gross
33 income from all sources shown on such return.

34 (D) Fiscal years. In applying this subdivision to a taxable year
35 beginning on any date other than January first, there shall be substi-
36 tuted, for the months specified in this subdivision, the months which
37 correspond thereto.

38 (E) Short taxable year. This subdivision shall be applied to taxable
39 years of less than twelve months in accordance with regulations
40 prescribed by the tax commission.

41 (F) Joint estimated tax of husband and wife. A husband and wife may
42 make the required annual payment determined under paragraph three of
43 this subdivision as if they were one taxpayer, in which case the liabil-
44 ity under paragraph one of this subdivision with respect to the esti-
45 mated tax shall be joint and several. No such joint payment may be made
46 if husband and wife are separated under a decree of divorce or separate
47 maintenance, or if they have different taxable years. If a joint
48 payment is made but husband and wife determine their taxes under this
49 chapter separately, the estimated tax for such year may be treated as
50 the estimated tax of either husband or wife, or may be divided between
51 them, as they may elect.

52 (6) Trusts and certain estates. (A) General. This subdivision shall
53 apply to any trust or estate except as provided in subparagraphs (B) and
54 (C) of this paragraph.

55 (B) Exception for estates and certain trusts. This subdivision shall
56 not apply with respect to any taxable year ending before the date two

1 years after the date of the decedent's death to (i) the estate of such
2 decedent or (ii) any trust all of which was treated, under subpart E of
3 part I of subchapter J of chapter one of the internal revenue code, as
4 owned by the decedent and to which the residue of the decedent's estate
5 will pass under his will, or, if no will is admitted to probate, which
6 is the trust primarily responsible for paying debts, taxes and expenses
7 of administration.

8 (C) Special rule for annualizations. In the case of any estate or
9 trust, subparagraph (B) of paragraph four of this subdivision shall be
10 applied by substituting "ending before the date one month before the due
11 date for the installment" for "ending before the due date for the
12 installment".

13 (D) In the case of a trust, the trustee may elect to treat any portion
14 of a payment of estimated tax made by such trust for any taxable year of
15 the trust as a payment made by a beneficiary of such trust. Any amount
16 so treated shall be treated as paid or credited to the beneficiary on
17 the last day of such taxable year, and for purposes of this subdivision,
18 the amount so treated shall not be treated as a payment of estimated tax
19 made by the trust, but shall be treated as a payment of estimated tax
20 made by such beneficiary on the January fifteenth following the end of
21 the trust's taxable year.

22 (E) An election under subparagraph (D) of this paragraph shall be made
23 on or before the sixty-fifth day after the close of the taxable year and
24 in such manner as the commissioner of taxation and finance may
25 prescribe.

26 (F) Extension to last year of estate. In the case of a taxable year
27 reasonably expected to be the last taxable year of an estate, any refer-
28 ence in subparagraph (D) of this paragraph to a trust shall be treated
29 as including a reference to an estate, and the fiduciary of the estate
30 shall be treated as the trustee.

31 (d) Exceptions to addition to tax for failure to pay estimated income
32 tax.

33 (1) Where tax is small amount. No addition to tax shall be imposed
34 under subdivision (c) of this section for any taxable year if the tax
35 shown on the return for such taxable year, or, if no return is filed,
36 the tax, reduced by the credit allowable under section 11-1773 of this
37 chapter, is less than one hundred dollars.

38 (2) Where no tax liability for preceding taxable year. No addition to
39 tax shall be imposed under subdivision (c) of this section for any taxa-
40 ble year if the preceding taxable year was a taxable year of twelve
41 months, the individual did not have any liability for tax under this
42 chapter for the preceding taxable year and throughout the preceding
43 taxable year the individual was a resident of this city or a nonresident
44 who had city adjusted gross income.

45 (3) Installment due on or after individual's death. No addition to
46 tax shall be imposed under subdivision (c) of this section with respect
47 to any installment due on or after the individual's death.

48 (4) Waiver in certain cases. (A) In general. No addition to tax
49 shall be imposed under subdivision (c) of this section with respect to
50 any underpayment to the extent the tax commission determines that by
51 reason of casualty, disaster or other unusual circumstances the imposi-
52 tion of such addition to tax would be against equity and good
53 conscience.

54 (B) Newly retired or disabled individuals. No addition to tax shall
55 be imposed under subdivision (c) of this section with respect to any
56 underpayment if the tax commission determines that in the taxable year

1 for which estimated payments were required to be made or in the taxable
2 year preceding such taxable year the taxpayer retired after having
3 attained age sixty-two or became disabled, and that such underpayment
4 was due to reasonable cause and not to willful neglect.

5 (e) Deficiency due to fraud. (1) If any part of a deficiency is due
6 to fraud, there shall be added to the tax an amount equal to fifty
7 percent of the deficiency.

8 (2) There shall be added to the tax, in addition to the amount deter-
9 mined under paragraph one of this subdivision, an amount equal to fifty
10 percent of the interest payable under section 11-1784 of this subchapter
11 with respect to the portion of the underpayment described in such para-
12 graph one which is attributable to fraud, for the period beginning on
13 the last day prescribed by law for payment of such underpayment, deter-
14 mined without regard to any extension, and ending on the date of the
15 assessment of the tax, or, if earlier, the date of the payment of the
16 tax.

17 (3) The addition to tax under this subdivision shall be in lieu of any
18 other addition to tax imposed by subdivision (a) or (b) of this section.

19 (4) In the case of a joint return under section 11-1751 of this chap-
20 ter, this subdivision shall not apply with respect to the tax of a
21 spouse unless some part of the underpayment is due to the fraud of such
22 spouse.

23 (f) Non-willful failure to pay withholding tax. If any employer,
24 without intent to evade or defeat any tax imposed by this chapter or the
25 payment thereof, shall fail to make a return and pay a tax withheld by
26 him or her at the time required by or under the provisions of section
27 11-1774 of this chapter, such employer shall be liable for such tax and
28 shall pay the same together with interest thereon and the addition to
29 tax provided in subdivision (a) of this section, and such interest and
30 addition to tax shall not be charged to or collected from the employee
31 by the employer. The tax commission shall have the same rights and
32 powers for the collection of such tax, interest and addition to tax
33 against such employer as are now prescribed by this chapter for the
34 collection of tax against an individual taxpayer.

35 (g) Willful failure to collect and pay over tax. Any person required
36 to collect, truthfully account for, and pay over the tax imposed by this
37 chapter who willfully fails to collect such tax or truthfully account
38 for and pay over such tax or willfully attempts in any manner to evade
39 or defeat the tax or the payment thereof, shall, in addition to other
40 penalties provided by law, be liable to a penalty equal to the total
41 amount of the tax evaded, or not collected, or not accounted for and
42 paid over. No addition to tax under subdivision (b) or (e) of this
43 section shall be imposed for any offense to which this subdivision
44 applies. The tax commission shall have the power, in its discretion, to
45 waive, reduce or compromise any penalty under this subdivision.

46 (h) Failure to file certain information returns. (1) Except as other-
47 wise provided in this paragraph, in case of each failure to file a
48 statement of a payment to another person, required under authority of
49 subdivision (d) of section 11-1758 of this chapter, relating to informa-
50 tion at source, including the duplicate statement of tax withheld on
51 wages, on the date prescribed therefor, determined with regard to any
52 extension of time for filing, unless it is shown that such failure is
53 due to reasonable cause and not to willful neglect, there shall, upon
54 notice and demand by the tax commission and in the same manner as tax,
55 be paid by the person so failing to file the statement, a penalty of
56 fifty dollars for each statement not so filed, but the total amount

1 imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars.

2
3 (2) If any partnership or S corporation required to file a return or
4 report under subdivision (c) of section 11-1758 of this chapter or under
5 section 11-1759 of this chapter for any taxable year fails to file such
6 return or report at the time prescribed therefor, determined with regard
7 to any extension of time for filing, or files a return or report which
8 fails to show the information required under such subdivision (c) or
9 section 11-1759 of this chapter, unless it is shown that such failure is
10 due to reasonable cause and not due to willful neglect, there shall,
11 upon notice and demand by the commissioner and in the same manner as
12 tax, be paid by the partnership or S corporation a penalty for each
13 month, or fraction thereof, during which such failure continues, but not
14 to exceed five months. The amount of such penalty for any month is the
15 product of fifty dollars, multiplied by the number of partners in the
16 partnership or shareholders in the S corporation during any part of the
17 taxable year who were subject to tax under this chapter during any part
18 of such taxable year.

19 (i) Additional penalty. Any person who with fraudulent intent shall
20 fail to pay, or to deduct or withhold and pay, any tax, or to make,
21 render, sign or certify any return, or to supply any information within
22 the time required by or under this chapter, shall be liable to penalty
23 of not more than one thousand dollars, in addition to any other amounts
24 required under this chapter, to be imposed, assessed and collected by
25 the tax commission. The tax commission shall have the power, in its
26 discretion, to waive, reduce or compromise any penalty under this subdivision.
27

28 (j) Fraudulent statement or failure to furnish statement to employee.
29 In addition to any criminal penalties provided by law, any person
30 required under the provisions of section 11-1772 of this chapter to
31 furnish a statement to an employee, who willfully furnishes a false or
32 fraudulent statement, or who willfully fails to furnish a statement in
33 the manner, at the time, and showing the information required under
34 section 11-1772 of this chapter, or regulations prescribed thereunder,
35 shall for each such failure be subject to a penalty under this chapter
36 of fifty dollars.

37 (k) Failure to supply identifying numbers. If any person who is
38 required by regulations prescribed under subdivision (b) of section
39 11-1758 of this chapter:

40 (1) to include his or her identifying number in any return, statement,
41 or other document;

42 (2) to furnish his or her identifying number to another person; or

43 (3) to include in any return, statement or other document made with
44 respect to another person the identifying number of such other person,
45 fails to comply with such requirement at the time prescribed by such
46 regulations, such person shall, unless it is shown that such failure is
47 due to reasonable cause and not due to willful neglect, pay a penalty of
48 five dollars for each such failure described in paragraph one of this
49 subdivision and fifty dollars for each such failure described in paragraph
50 two of this subdivision, and this paragraph, except that the total
51 amount imposed on such person for all such failures during any calendar
52 year shall not exceed ten thousand dollars; except that for failure to
53 include his or her own identification number in any return, statement or
54 other document, such penalty shall not be imposed unless such person
55 shall have failed to supply his or her identification number to the tax
56 commission within thirty days after demand therefor.

1 (1) Additions treated as tax. The additions to tax and penalties
2 provided by this section shall be paid upon notice and demand and shall
3 be assessed, collected and paid in the same manner as taxes, and any
4 reference in this chapter to income tax or tax imposed by this chapter,
5 shall be deemed also to refer to the additions to tax and penalties
6 provided by this section. For purposes of section 11-1781 of this
7 subchapter, this subdivision shall not apply to:

8 (1) any addition to tax under subdivision (a) of this section except
9 as to that portion attributable to a deficiency;

10 (2) any addition to tax under subdivision (c) of this section;

11 (3) any penalty under subdivision (h) of this section and any addi-
12 tional penalty under subdivision (i) of this section; and

13 (4) any penalties under subdivisions (j), (k), (q), (r), (s) and (t)
14 of this section.

15 (m) Determination of deficiency. For purposes of subdivisions (b) and
16 (e) of this section, the amount shown as the tax by the taxpayer upon
17 his or her return shall be taken into account in determining the amount
18 of the deficiency only if such return was filed on or before the last
19 day prescribed for the filing of such return, determined with regard to
20 any extension of time for such filing.

21 (n) Person defined. For purposes of subdivisions (g), (i), (o), (q)
22 and (r) of this section, the term person includes an individual, corpo-
23 ration, partnership or limited liability company or an officer or
24 employee of any corporation, including a dissolved corporation, or a
25 member or employee of any partnership, or a member, manager or employee
26 of a limited liability company, who as such officer, employee, manager
27 or member is under a duty to perform the act in respect of which the
28 violation occurs.

29 (o) Failure to make deposits of taxes. In case of failure by any
30 person required by this chapter, or by regulations of the tax commission
31 under this chapter, to deposit on the date prescribed therefor any
32 amount of tax imposed by this chapter in a depository authorized pursu-
33 ant to subdivision (a) of section 11-1792 of this subchapter to receive
34 such deposits, unless it is shown that such failure is due to reasonable
35 cause and not due to willful neglect, there shall be imposed on such
36 person a penalty of five percent of the amount of the underpayment. For
37 purposes of this subdivision the term "underpayment" means the excess of
38 the amount of the tax required to be so deposited over the amount, if
39 any, thereof, deposited on or before the date prescribed therefor.

40 (p) Substantial understatement of liability. If there is a substantial
41 understatement of income tax for any taxable year, there shall be added
42 to the tax an amount equal to ten percent of the amount of any underpay-
43 ment attributable to such understatement. For purposes of this subdivi-
44 sion, there is a substantial understatement of income tax for any taxa-
45 ble year if the amount of the understatement for the taxable year
46 exceeds the greater of ten percent of the tax required to be shown on
47 the return for the taxable year, or two thousand dollars. For purposes
48 of this subdivision, the term "understatement" means the excess of the
49 amount of the tax required to be shown on the return for the taxable
50 year, over the amount of the tax imposed which is shown on the return
51 reduced by any rebate, within the meaning of subdivision (g) of section
52 11-1781 of this subchapter. The amount of such understatement shall be
53 reduced by that portion of the understatement which is attributable to
54 the tax treatment of any item by the taxpayer if there is or was
55 substantial authority for such treatment, or any item with respect to
56 which the relevant facts affecting the item's tax treatment are

1 adequately disclosed in the return or in a statement attached to the
2 return. The tax commission may waive all or any part of the addition to
3 tax provided by this subdivision on a showing by the taxpayer that there
4 was reasonable cause for the understatement, or part thereof, and that
5 the taxpayer acted in good faith.

6 (q) Frivolous tax returns. If any individual files what purports to
7 be a return of any tax imposed by this chapter but which does not
8 contain information on which the substantial correctness of the self-as-
9 sessment may be judged, or contains information that on its face indi-
10 cates that the self-assessment is substantially incorrect; and such
11 conduct is due to a position which is frivolous, or an intent, which
12 appears on the purported return, to delay or impede the administration
13 of this chapter, then such individual shall pay a penalty not exceeding
14 five hundred dollars. This penalty shall be in addition to any other
15 penalty provided by law.

16 (r) Aiding or assisting in the giving of fraudulent returns, reports,
17 statements or other documents. (1) Any person who, with the intent that
18 tax be evaded, shall, for a fee or other compensation or as an incident
19 to the performance of other services for which such person receives
20 compensation, aid or assist in, or procure, counsel, or advise the prep-
21 aration or presentation under, or in connection with any matter arising
22 under this chapter of any return, report, declaration, statement or
23 other document which is fraudulent or false as to any material matter,
24 or supply any false or fraudulent information, whether or not such
25 falsity of fraud is with the knowledge or consent of the person author-
26 ized or required to present such return, report, declaration, statement
27 or other document shall pay a penalty not exceeding one thousand
28 dollars.

29 (2) For purposes of paragraph one of this subdivision, the term
30 "procures" includes ordering, or otherwise causing, a subordinate to do
31 an act, and knowing of, and not attempting to prevent, participation by
32 a subordinate in an act. The term "subordinate" means any other person,
33 whether or not a director, officer, employee, or agent of the taxpayer
34 involved, over whose activities the person has direction, supervision or
35 control.

36 (3) For purposes of paragraph one of this subdivision, a person
37 furnishing typing, reproducing, or other mechanical assistance with
38 respect to a document shall not be treated as having aided or assisted
39 in the preparation of such document by reason of such assistance.

40 (4) The penalty imposed by this subdivision shall be in addition to
41 any other penalty provided by law.

42 (s) False information with respect to withholding. In addition to any
43 criminal penalty provided by law, if any individual makes a statement
44 under section 11-1771 of this chapter which results in a decrease in the
45 amounts deducted and withheld under this chapter, and as of the time
46 such statement was made, there was no reasonable basis for such state-
47 ment, such individual shall pay a penalty of five hundred dollars for
48 such statement. The tax commission shall waive the penalty imposed
49 under this subdivision if the taxes imposed with respect to the individ-
50 ual under this chapter for the taxable year are equal to or less than
51 the sum of the credits against such taxes allowed by this chapter, and
52 the payments of estimated tax which are considered payments on account
53 of such taxes.

54 (t) Failure of tax return preparer to conform to certain requirements.
55 (1) Failure to sign return or claim for refund. Any individual who is a
56 tax return preparer with respect to any return or claim for refund, who

1 is required pursuant to paragraph one of subdivision (g) of section
2 11-1758 of this chapter to sign such return or claim for refund, and who
3 fails to comply with such requirement with respect to such return or
4 claim for refund, shall be subject to a penalty of fifty dollars for
5 each such failure, unless it is shown that such failure is due to
6 reasonable cause and not due to willful neglect. The maximum penalty
7 imposed under this paragraph on any person with respect to returns or
8 claims for refund filed during any calendar year shall not exceed twen-
9 ty-five thousand dollars.

10 (2) Failure to furnish identifying number. If any identifying number
11 required to be included on any return or claim for refund pursuant to
12 paragraph two of subdivision (g) of section 11-1758 of this chapter is
13 not so included, the person who is the tax return preparer with respect
14 to such return or claim for refund shall be subject to a penalty of
15 fifty dollars with respect to such return or claim for refund unless it
16 is shown that such failure is due to reasonable cause and not willful
17 neglect. For purposes of this paragraph, where an employer and one or
18 more employees of such employer are tax return preparers with respect to
19 the same return or claim for refund or where a partnership and one or
20 more partners in such partnership are tax return preparers with respect
21 to the same return or claim for refund, such employer or such partner-
22 ship shall be deemed to be the sole tax return preparer with respect to
23 such return or claim for refund. The maximum penalty imposed under this
24 paragraph on any person with respect to returns or claims for refund
25 filed during any calendar year shall not exceed twenty-five thousand
26 dollars.

27 (3) Failure to furnish copy to taxpayer. Any person who is a tax
28 return preparer with respect to any return or claim for refund, who is
29 required under paragraph three of subdivision (g) of section 11-1758 of
30 this chapter to furnish a copy of such return or claim for refund to the
31 taxpayer, and who fails to comply with such provision with respect to
32 such return or claim for refund shall be subject to a penalty of fifty
33 dollars for each such failure, unless it is shown that such failure is
34 due to reasonable cause and not due to willful neglect. The maximum
35 penalty imposed under this paragraph on any person with respect to
36 returns or claims for refund filed during any calendar year shall not
37 exceed twenty-five thousand dollars.

38 (4) Failure to retain copy or list. Any person who is a tax return
39 preparer with respect to any return or claim for refund, who is required
40 under paragraph four of subdivision (g) of section 11-1758 of this chap-
41 ter to: (i) retain a copy of such return or claim for refund or retain
42 on a list the name and taxpayer identifying number of the taxpayer for
43 whom such return or claim for refund was prepared and (ii) make such
44 copy or list available for inspection upon request by the commissioner
45 of taxation and finance, and who fails to comply with the retention
46 requirement or who complies with the retention requirement but fails to
47 comply with such request by the commissioner, shall be subject to a
48 penalty of fifty dollars for each such failure, unless it is shown that
49 such failure is due to reasonable cause and not due to willful neglect.
50 The maximum penalty imposed under this paragraph on any person with
51 respect to any calendar year shall not exceed twenty-five thousand
52 dollars.

53 (5) Failure to electronically file. If a tax return preparer is
54 required to file returns electronically pursuant to paragraph ten of
55 subdivision (g) of section 11-1758 of this chapter, and such preparer
56 fails to file one or more of such returns electronically, then such

1 preparer shall be subject to a penalty of fifty dollars for each such
2 failure to electronically file a return, unless it is shown that such
3 failure is due to reasonable cause and not due to willful neglect. For
4 purposes of this paragraph, reasonable cause shall include, but not be
5 limited to, a taxpayer's election not to electronically file his or her
6 return.

7 § 11-1786 Overpayment. (a) General. The state commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by chapter nineteen of this title on the person who made the overpayment or any other tax imposed on such person pursuant to the authority of the tax law or any other law if such tax is administered by the state commissioner of taxation and finance, against any liability in respect of any tax imposed on such person by the tax law and, as provided in sections one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of the tax law, against past-due support, against a past-due legally enforceable debt, against a city of New York tax warrant judgment debt and against the amount of a default in repayment of a guaranteed student, state university or city university loan. The balance shall be refunded by the state comptroller out of the proceeds of the tax retained by him or her for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the state commissioner of taxation and finance approved by the state comptroller. The state comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the state commissioner of taxation and finance.

31 (b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

34 (c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 11-1771 of this chapter, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

38 (d) Overpayment by a deceased person. Notwithstanding section thirteen hundred ten of the surrogate's court procedure act, any overpayment by a decedent not in excess of one thousand dollars may be refunded to the decedent's surviving spouse unless the return for the decedent was filed by his or her executor or administrator.

43 (e) Credits against estimated tax. The commissioner of taxation and finance may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, except upon request to the commissioner of taxation and finance on or before the last day prescribed for the filing of the return for the succeeding taxable year, determined with regard to any extension of time granted. If good cause is shown for reversing the credit, the commissioner of taxation and finance may, in his or her discretion, credit the overpayment against a

1 liability or refund the overpayment without interest. Provided, the
2 person who made the overpayment will not be relieved of liability for
3 any penalty imposed for a consequent underpayment of estimated tax for
4 the succeeding taxable year. The decision of the commissioner of taxa-
5 tion and finance to grant or deny the request is final and not subject
6 to further administrative or judicial review.

7 (f) Rule where no tax liability. If there is no tax liability for a
8 period in respect of which an amount is paid as income tax, such amount
9 shall be considered an overpayment.

10 (g) Assessment and collection after limitation period. If any amount
11 of income tax is assessed or collected after the expiration of the peri-
12 od of limitations properly applicable thereto, such amount shall be
13 considered an overpayment.

14 (h) Cross reference. For provision barring application of article
15 fifty-two of the civil practice law and rules to any amount to be
16 refunded or credited to a taxpayer, see section seven of the tax law.

17 § 11-1787 Limitations on credit or refund. (a) General. Claim for
18 credit or refund of an overpayment of income tax shall be filed by the
19 taxpayer within three years from the time the return was filed or two
20 years from the time the tax was paid, whichever of such periods expires
21 the later, or if no return was filed, within two years from the time the
22 tax was paid. If the claim is filed within the three year period, the
23 amount of the credit or refund shall not exceed the portion of the tax
24 paid within the three years immediately preceding the filing of the
25 claim plus the period of any extension of time for filing the return.
26 If the claim is not filed within the three year period, but is filed
27 within the two year period, the amount of the credit or refund shall not
28 exceed the portion of the tax paid during the two years immediately
29 preceding the filing of the claim. Except as otherwise provided in this
30 section, if no claim is filed, the amount of a credit or refund shall
31 not exceed the amount which would be allowable if a claim had been filed
32 on the date the credit or refund is allowed.

33 (b) Extension of time by agreement. If an agreement under the
34 provisions of paragraph two of subdivision (c) of section 11-1783 of
35 this subchapter, extending the period for assessment of income tax, is
36 made within the period prescribed in subdivision (a) of this section
37 for the filing of a claim for credit or refund, the period for filing a
38 claim for credit or refund, or for making credit or refund if no claim
39 is filed, shall not expire prior to six months after the expiration of
40 the period within which an assessment may be made pursuant to the agree-
41 ment or any extension thereof. The amount of such credit or refund
42 shall not exceed the portion of the tax paid after the execution of the
43 agreement and before the filing of the claim or the making of the credit
44 or refund, as the case may be, plus the portion of the tax paid within
45 the period which would be applicable under subdivision (a) of this
46 section if a claim had been filed on the date the agreement was
47 executed.

48 (c) Notice of federal change or correction. A claim for credit or
49 refund of any overpayment of tax attributable to a federal change or
50 correction required to be reported pursuant to section 11-1759 of this
51 chapter shall be filed by the taxpayer within two years from the time
52 the notice of such change or correction or such amended return was
53 required to be filed with the commissioner of taxation and finance. If
54 the report or amended return required by section 11-1759 of this chapter
55 is not filed within the ninety day period therein specified, no interest
56 shall be payable on any claim for credit or refund of the overpayment

1 attributable to the federal change or correction. The amount of such
2 credit or refund shall not exceed the amount of the reduction in tax
3 attributable to such federal change, correction or items amended on the
4 taxpayer's amended federal income tax return. This subdivision shall
5 not affect the time within which or the amount for which a claim for
6 credit or refund may be filed apart from this subdivision.

7 (d) Overpayment attributable to net operating loss carryback. A claim
8 for credit or refund of so much of an overpayment as is attributable to
9 the application to the taxpayer of a net operating loss carryback shall
10 be filed within three years from the time the return was due, including
11 extensions thereof, for the taxable year of the loss, or within the
12 period prescribed in subdivision (b) of this section in respect of such
13 taxable year, or within the period prescribed in subdivision (c) of this
14 section, where applicable, in respect of the taxable year to which the
15 net operating loss is carried back, whichever expires the latest.

16 (e) Failure to file claim within prescribed period. No credit or
17 refund shall be allowed or made, except as provided in subdivision (f)
18 of this section or subdivision (d) of section 11-1790 of this subchap-
19 ter, after the expiration of the applicable period of limitation speci-
20 fied in this chapter, unless a claim for credit or refund is filed by
21 the taxpayer within such period. Any later credit shall be void and any
22 later refund erroneous. No period of limitations specified in any other
23 law shall apply to the recovery by a taxpayer of moneys paid in respect
24 of taxes under this chapter.

25 (f) Effect of petition to tax commission. If a notice of deficiency
26 for a taxable year has been mailed to the taxpayer under section 11-1781
27 of this subchapter and if the taxpayer files a timely petition with the
28 tax commission under section 11-1789 of this subchapter, it may deter-
29 mine that the taxpayer has made an overpayment for such year, whether or
30 not it also determines a deficiency for such a year. No separate claim
31 for credit or refund for such year shall be filed, and no credit or
32 refund for such year shall be allowed or made, except:

33 (1) as to overpayments determined by a decision of the tax commission
34 which has become final; and

35 (2) as to any amount collected in excess of an amount computed in
36 accordance with the decision of the tax commission which has become
37 final; and

38 (3) as to any amount collected after the period of limitation upon the
39 making of levy for collection has expired; and

40 (4) as to any amount claimed as a result of a change or correction
41 described in subdivision (c) of this section.

42 (g) Limit on amount of credit or refund. The amount of overpayment
43 determined under subdivision (f) of this section shall, when the deci-
44 sion of the tax commission has become final, be credited or refunded in
45 accordance with subdivision (a) of section 11-1786 of this subchapter
46 and shall not exceed the amount of tax which the tax commission deter-
47 mines as part of its decision was paid:

48 (1) after the mailing of the notice of deficiency, or

49 (2) within the period which would be applicable under subdivision (a),
50 (b) or (c) of this section, if on the date of the mailing of the notice
51 of deficiency a claim had been filed, whether or not filed, stating the
52 grounds upon which the tax commission finds that there is an overpay-
53 ment.

54 (h) Early return. For purposes of this section, any return filed
55 before the last day prescribed for the filing thereof shall be consid-

1 ered as filed on such last day, determined without regard to any exten-
2 sion of time granted the taxpayer.

3 (i) Prepaid income tax. For purposes of this section, any tax paid by
4 the taxpayer before the last day prescribed for its payment, any income
5 tax withheld from the taxpayer during any calendar year, and any amount
6 paid by the taxpayer as estimated income tax for a taxable year shall be
7 deemed to have been paid by him or her on the fifteenth day of the
8 fourth month following the close of his or her taxable year with respect
9 to which such amount constitutes a credit or payment.

10 (j) Return and payment of withholding tax. Notwithstanding subdivi-
11 sion (h) of this section, for purposes of this section with respect to
12 any withholding tax:

13 (1) if a return for any period ending with or within a calendar year
14 is filed before April fifteenth of the succeeding calendar year, such
15 return shall be considered filed on April fifteenth of such succeeding
16 calendar year; and

17 (2) if a tax with respect to remuneration paid during any period
18 ending with or within a calendar year is paid before April fifteenth of
19 the succeeding calendar year, such tax shall be considered paid on April
20 fifteenth of such succeeding calendar year.

21 (k) Running of periods of limitation suspended while taxpayer is
22 unable to manage financial affairs due to disability. (1) In the case of
23 an individual taxpayer, the running of the periods specified in subdivi-
24 sions (a), (b), and (c) of this section shall be suspended during any
25 period of such individual's life that such individual is financially
26 disabled. For purposes of this subdivision, an individual taxpayer is an
27 individual who is subject to the tax imposed under this chapter.

28 (2) For purposes of paragraph one of this subdivision, an individual
29 taxpayer is financially disabled if such individual is unable to manage
30 his or her financial affairs by reason of a medically determinable phys-
31 ical or mental impairment of that individual which can be expected to
32 result in death or which has lasted or can be expected to last for a
33 continuous period of not less than twelve months. An individual shall
34 not be considered to have such impairment unless proof of the existence
35 thereof is furnished in such form and manner as the commissioner of
36 taxation and finance may require.

37 (3) An individual taxpayer shall not be treated as financially disa-
38 bled during any period that such individual's spouse or any other person
39 is authorized to act on behalf of such individual in financial matters.

40 (l) Cross reference. For provision barring refund of overpayment
41 credited against tax of a succeeding year, see subdivision (e) of
42 section 11-1786 of this subchapter.

43 § 11-1788 Interest on overpayment. (a) General. Notwithstanding the
44 provisions of section sixteen of the state finance law, interest shall
45 be allowed and paid as follows at the overpayment rate set by the
46 commissioner of taxation and finance pursuant to section 11-1797 of this
47 subchapter, or if no rate is set, at the rate of six percent per annum
48 upon any overpayment in respect of the tax imposed by this chapter:

49 (1) from the date of the overpayment to the due date of an amount
50 against which a credit is taken;

51 (2) from the date of the overpayment to a date, to be determined by
52 the commissioner of taxation and finance, preceding the date of a refund
53 check by not more than thirty days, whether or not such refund check is
54 accepted by the taxpayer after tender of such check to the taxpayer. The
55 acceptance of such check shall be without prejudice to any right of the
56 taxpayer to claim any additional overpayment and interest thereon.

1 (3) Late and amended returns and claims for credit or refund.
2 Notwithstanding paragraph one or two of this subdivision, in the case of
3 an overpayment claimed on a return of tax which is filed after the last
4 date prescribed for filing such return, determined with regard to exten-
5 sions, or claimed on an amended return of tax or claimed on a claim for
6 credit or refund, no interest shall be allowed or paid for any day
7 before the date on which such return or claim is filed.

8 (4) Interest on certain refunds. To the extent provided for in regu-
9 lations promulgated by the commissioner of taxation and finance, if an
10 item of income, gain, loss, deduction or credit is changed from the
11 taxable year or period in which it is reported to the taxable year or
12 period in which it belongs and the change results in an underpayment in
13 a taxable year or period and an overpayment in some other taxable year
14 or period, the provisions of paragraph three of this subdivision with
15 respect to an overpayment shall not be applicable to the extent that the
16 limitation in such paragraph on the right to interest would result in a
17 taxpayer not being allowed interest for a length of time with respect to
18 an overpayment while being required to pay interest on an equivalent
19 amount of the related underpayment. However, this paragraph shall not be
20 construed as limiting or mitigating the effect of any statute of limita-
21 tions or any other provision of law relating to the authority of such
22 commissioner to issue a notice of deficiency or to allow a credit or
23 refund on an overpayment.

24 (5) Amounts of less than one dollar. No interest shall be allowed or
25 paid if the amount thereof is less than one dollar.

26 (b) Advance payment of tax, payment of estimated tax, and credit for
27 income tax withholding. The provisions of subdivisions (h) and (i) of
28 section 11-1787 of this subchapter applicable in determining the date of
29 payment of tax for purposes of determining the period of limitations on
30 credit or refund, shall be applicable in determining the date of payment
31 for purposes of this section.

32 (c) Income tax refund within forty-five days of claim for overpayment.
33 If any overpayment of tax imposed by this chapter is credited or
34 refunded within forty-five days after the last date prescribed, or
35 permitted by extension of time, for filing the return of such tax on
36 which such overpayment was claimed or within forty-five days after such
37 return was filed, whichever is later, or within forty-five days after an
38 amended return was filed claiming such overpayment or within forty-five
39 days after a claim for credit or refund was filed on which such overpay-
40 ment was claimed, within six months after a demand is filed pursuant to
41 paragraph six of subsection (b) of section six hundred fifty-one of the
42 tax law, no interest shall be allowed under this section on any such
43 overpayment. For purposes of this subdivision, any amended return or
44 claim for credit or refund filed before the last day prescribed, or
45 permitted by extension of time, for the filing of the return of tax for
46 such year shall be considered as filed on such last day.

47 (d) Refund of income tax caused by carryback. For purposes of this
48 section, if any overpayment of tax imposed by this chapter results from
49 a carryback of a net operating loss, such overpayment shall be deemed
50 not to have been made prior to the filing date for the taxable year in
51 which such net operating loss arises. Such filing date shall be deter-
52 mined without regard to extensions of time to file. For purposes of
53 subdivision (c) of this section any overpayment described herein shall
54 be treated as an overpayment for the loss year and such subdivision
55 shall be applied with respect to such overpayment by treating the return
56 for the loss year as not filed before claim for such overpayment is

1 filed. The term "loss year" means the taxable year in which such loss
2 arises.

3 (e) No interest until return in processible form.

4 (1) For purposes of subdivisions (a) and (c) of this section, a return
5 shall not be treated as filed until it is filed in processible form.

6 (2) For purposes of paragraph one of this subdivision, a return is in
7 a processible form if:

8 (A) such return is filed on a permitted form, and

9 (B) such return contains:

10 (i) the taxpayer's name, address, and identifying number and the
11 required signatures, and

12 (ii) sufficient required information, whether on the return or on
13 required attachments, to permit the mathematical verification of tax
14 liability shown on the return.

15 (f) Overpayment credited against past-due support, or against a past-
16 due legally enforceable debt, or a city of New York tax warrant judgment
17 debt, or defaulted guaranteed student, state university or city univer-
18 sity loans. If interest is payable pursuant to this section on that
19 portion of an overpayment of tax imposed by this chapter which is certi-
20 fied by the state commissioner of taxation and finance to the state
21 comptroller as the amount to be credited against past-due support, or
22 against a past-due legally enforceable debt, or a city of New York tax
23 warrant judgment debt, or the amount of a default in repayment of a
24 guaranteed student, state university or city university loan, as the
25 case may be, pursuant to the provisions of sections one hundred seven-
26 ty-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one
27 hundred seventy-one-f and one hundred seventy-one-l of the tax law, such
28 portion of such an overpayment shall cease to bear interest on the date
29 of such certification.

30 (g) Cross-reference. For provision with respect to interest after
31 failure to file notice of federal change under section 11-1759 of this
32 chapter, see subdivision (c) of section 11-1787 of this subchapter.

33 § 11-1789 Petition to tax commission. (a) General. The form of a
34 petition to the tax commission, and further proceedings before the tax
35 commission in any case initiated by the filing of a petition, shall be
36 governed by such rules as the tax commission shall prescribe. No peti-
37 tion shall be denied in whole or in part without opportunity for a hear-
38 ing on reasonable prior notice. Such hearing shall be conducted by one
39 or more members of the tax commission, or by a hearing officer desig-
40 nated by the tax commission to take evidence and report to the tax
41 commission. The tax commissioners shall, acting as a body, jointly
42 decide the case as quickly as practicable. Notice of the decision shall
43 be mailed promptly to the taxpayer by certified or registered mail at
44 his or her last known address, and such notice shall set forth the tax
45 commission's findings of fact and a brief statement of the grounds of
46 decision in each case decided in whole or in part adversely to the
47 taxpayer.

48 (b) Petition for redetermination of a deficiency. Within ninety days,
49 or one hundred fifty days if the notice is addressed to a person outside
50 of the United States, after the mailing of the notice of deficiency
51 authorized by section 11-1781 of this subchapter, the taxpayer may file
52 a petition with the tax commission for a redetermination of the defi-
53 ciency. Such petition may also assert a claim for refund for the same
54 taxable year or years, subject to the limitations of subdivision (g) of
55 section 11-1787 of this subchapter.

1 (c) Petition for refund. A taxpayer may file a petition with the tax
2 commission for the amounts asserted in a claim for refund if:

3 (1) the taxpayer has filed a timely claim for refund with the tax
4 commission,

5 (2) the taxpayer has not previously filed with the tax commission a
6 timely petition under subdivision (b) of this section for the same
7 taxable year unless the petition under this subdivision relates to a
8 separate claim for credit or refund properly filed under subdivision (f)
9 of section 11-1787 of this subchapter, and

10 (3) either: (A) six months have expired since the claim was filed, or
11 (B) the tax commission has mailed to the taxpayer, by registered or
12 certified mail, a notice of disallowance of such claim in whole or in
13 part.

14 No petition under this subdivision shall be filed more than two years
15 after the date of mailing of a notice of disallowance, unless prior to
16 the expiration of such two year period it has been extended by written
17 agreement between the taxpayer and the tax commission. If a taxpayer
18 files a written waiver of the requirement that he or she be mailed a
19 notice of disallowance, the two year period prescribed by this subdivi-
20 sion for filing a petition for refund shall begin on the date such waiv-
21 er is filed.

22 (d) Assertion of deficiency after filing petition.

23 (1) Petition for redetermination of deficiency. If a taxpayer files
24 with the tax commission, a petition for redetermination of a deficiency,
25 the tax commission shall have power to determine a greater deficiency
26 than asserted in the notice of deficiency and to determine if there
27 should be assessed any addition to tax or penalty provided in section
28 11-1785 of this subchapter, if claim therefor is asserted at or before
29 the hearing under rules of the tax commission.

30 (2) Petition for refund. If the taxpayer files with the tax commis-
31 sion a petition for credit or refund for a taxable year, the tax commis-
32 sion may:

33 (A) determine a deficiency for such year as to any amount of defi-
34 ciency asserted at or before the hearing under rules of the tax commis-
35 sion, and within the period in which an assessment would be timely under
36 section 11-1783 of this subchapter, or

37 (B) deny so much of the amount for which credit or refund is sought
38 in the petition, as is offset by other issues pertaining to the same
39 taxable year which are asserted at or before the hearing under rules of
40 the tax commission.

41 (3) Opportunity to respond. A taxpayer shall be given a reasonable
42 opportunity to respond to any matters asserted by the tax commission
43 under this subdivision.

44 (4) Restriction on further notices of deficiency. If the taxpayer
45 files a petition with the tax commission under this section, no notice
46 of deficiency under section 11-1781 of this subchapter may thereafter be
47 issued by the tax commission for the same taxable year, except in case
48 of fraud or with respect to a change or correction required to be
49 reported under section 11-1759 of this chapter.

50 (e) Burden of proof. In any case before the tax commission under this
51 chapter, the burden of proof shall be upon the petitioner except for the
52 following issues, as to which the burden of proof shall be upon the tax
53 commission:

54 (1) whether the petitioner has been guilty of fraud with intent to
55 evade tax;

1 (2) whether the petitioner is liable as the transferee of property of
2 a taxpayer, but not to show that the taxpayer was liable for the tax;

3 (3) whether the petitioner is liable for any increase in a deficiency
4 where such increase is asserted initially after a notice of deficiency
5 was mailed and a petition under this section filed, unless such increase
6 in deficiency is the result of a change or correction required to be
7 reported under section 11-1759 of this chapter, and of which change or
8 correction the tax commission had no notice at the time it mailed the
9 notice of deficiency; and

10 (4) whether any person is liable for a penalty under subdivision (q)
11 or (r) of section 11-1785 of this subchapter.

12 (f) Evidence of related federal determination. Evidence of a federal
13 determination relating to issues raised in a case before the tax commis-
14 sion under this section shall be admissible, under rules established by
15 the tax commission.

16 (g) Jurisdiction over other years. The tax commission shall consider
17 such facts with relation to the taxes for other years as may be neces-
18 sary correctly to determine the tax for the taxable year, but in so
19 doing shall have no jurisdiction to determine whether or not the tax for
20 any other year has been overpaid or underpaid.

21 § 11-1790 Review of tax commission decision. (a) General. A decision
22 of the tax commission shall be subject to judicial review at the
23 instance of any taxpayer effected thereby in the manner provided by law
24 for the review of a final decision or action of administrative agencies
25 of the state. An application by a taxpayer for such review must be made
26 within four months after notice of the decision is sent by certified or
27 registered mail to the taxpayer.

28 (b) Judicial review exclusive remedy of taxpayer. The review of a
29 decision of the tax commission provided by this section shall be the
30 exclusive remedy available to any taxpayer for the judicial determi-
31 nation of the liability of the taxpayer for the taxes imposed by this
32 chapter.

33 (c) Assessment pending review; review bond. Irrespective of any
34 restrictions on the assessment and collection of deficiencies, the tax
35 commission may assess a deficiency after the expiration of the period
36 specified in subdivision (a) of this section, notwithstanding that an
37 application for judicial review in respect of such deficiency has been
38 duly made by the taxpayer, unless the taxpayer, at or before the time
39 his or her application for review is made, has paid the deficiency, has
40 deposited with the tax commission the amount of the deficiency, or has
41 filed with the tax commission a bond, which may be a jeopardy bond under
42 subdivision (h) of section 11-1794 of this subchapter, in the amount of
43 the portion of the deficiency, including interest and other amounts, in
44 respect of which the application for review is made and all costs and
45 charges which may accrue against him or her in the prosecution of the
46 proceeding, including costs of all appeals, and with surety approved by
47 a justice of the supreme court of the state of New York, conditioned
48 upon the payment of the deficiency, including interest and other
49 amounts, as finally determined and such costs and charges. If as a
50 result of a waiver of the restrictions on the assessment and collection
51 of a deficiency any part of the amount determined by the tax commission
52 is paid after the filing of the review bond, such bond shall, at the
53 request of the taxpayer, be proportionately reduced.

54 (d) Credit, refund or abatement after review. If the amount of a
55 deficiency determined by the tax commission is disallowed in whole or in
56 part by the court of review, the amount so disallowed shall be credited

1 or refunded to the taxpayer, without the making of claim therefor, or,
2 if payment has not been made, shall be abated.

3 (e) Date of finality of tax commission decision. A decision of the
4 tax commission shall become final upon the expiration of the period
5 specified in subdivision (a) of this section for making an application
6 for review, if no such application has been duly made within such time,
7 or if such application has been duly made, upon expiration of the time
8 for all further judicial review, or upon the rendering by the tax
9 commission of a decision in accordance with the mandate of the court on
10 review, provided, however, for the purpose of making an application for
11 review, the decision of the tax commission shall be deemed final on the
12 date the notice of decision is sent by certified or registered mail to
13 the taxpayer.

14 § 11-1791 Mailing rules; holidays; miscellaneous. (a) Timely mail-
15 ing. (1) If any return, claim, statement, notice, petition, or other
16 document required to be filed, or any payment required to be made, with-
17 in a prescribed period or on or before a prescribed date under authority
18 of any provision of this chapter is, after such period or such date,
19 delivered by United States mail to the tax commission, bureau, office,
20 officer or person with which or with whom such document is required to
21 be filed, or to which or to whom such payment is required to be made,
22 the date of the United States postmark stamped on the envelope shall be
23 deemed to be the date of delivery. This subdivision shall apply only if
24 the postmark date falls within the prescribed period or on or before the
25 prescribed date for the filing of such document, or for making the
26 payment, including any extension granted for such filing or payment, and
27 only if such document or payment was deposited in the mail, postage
28 prepaid, properly addressed to the tax commission, bureau, office, offi-
29 cer or person with which or with whom the document is required to be
30 filed or to which or to whom such payment is required to be made. If any
31 document or payment is sent by United States registered mail, such
32 registration shall be prima facie evidence that such document or payment
33 was delivered to the tax commission, bureau, office, officer or person
34 to which or to whom addressed. To the extent that the tax commission
35 shall prescribe by regulation, certified mail may be used in lieu of
36 registered mail under this section. This subdivision shall apply in the
37 case of postmarks not made by the United States post office only if and
38 to the extent provided by regulations of the tax commission.

39 (2)(A) Any reference in paragraph one of this subdivision to the
40 United States mail shall be treated as including a reference to any
41 delivery service designated by the secretary of the treasury of the
42 United States pursuant to section seventy-five hundred two of the Inter-
43 nal Revenue Code and any reference in paragraph one of this subdivision
44 to a postmark by the United States mail shall be treated as including a
45 reference to any date recorded or marked in the manner described in
46 section seventy-five hundred two of the Internal Revenue Code by a
47 designated delivery service. If the commissioner of taxation and finance
48 finds that any delivery service designated by such secretary is inade-
49 quate for the needs of the state, such commissioner may withdraw such
50 designation for purposes of this article. Such commissioner may also
51 designate additional delivery services meeting the criteria of section
52 seventy-five hundred two of the Internal Revenue Code for purposes of
53 this article, or may withdraw any such designation if such commissioner
54 finds that a delivery service so designated is inadequate for the needs
55 of the state. Any reference in paragraph one of this subdivision to the
56 United States mail shall be treated as including a reference to any

1 delivery service designated by such commissioner and any reference in
2 paragraph one of this subdivision to a postmark by the United States
3 mail shall be treated as including a reference to any date recorded or
4 marked in the manner described in section seventy-five hundred two of
5 the Internal Revenue Code by a delivery service designated by the
6 commissioner.

7 (B) Any equivalent of registered or certified mail designated by the
8 United States secretary of the treasury, or as may be designated by the
9 commissioner of taxation and finance pursuant to the same criteria used
10 by the secretary for such designation pursuant to section seventy-five
11 hundred two of the Internal Revenue Code, shall be included within the
12 meaning of registered or certified mail as used in paragraph one of this
13 subdivision. If such commissioner finds that any equivalent of regis-
14 tered or certified mail designated by such secretary or such commission-
15 er is inadequate for the needs of the state, such commissioner may with-
16 draw such designation for purposes of this article.

17 (b) Last known address. For purposes of this chapter, a taxpayer's
18 last known address shall be the address given in the last return filed
19 by such taxpayer, unless subsequent to the filing of such return the
20 taxpayer shall have notified the tax commission of a change of address.

21 (c) Last day a Saturday, Sunday or legal holiday. When the last day
22 prescribed under authority of this chapter, including any extension of
23 time, for performing any act falls on Saturday, Sunday, or a legal holi-
24 day in the state of New York, the performance of such act shall be
25 considered timely if it is performed on the next succeeding day which is
26 not a Saturday, Sunday or a legal holiday.

27 (d) Certificate; unfiled return. For purposes of this chapter, the
28 certificate of the tax commission to the effect that a tax has not been
29 paid, that a return has not been filed, or that information has not been
30 supplied, as required by or under the provisions of this chapter, shall
31 be prima facie evidence that such tax has not been paid, that such
32 return has not been filed, or that such information has not been
33 supplied.

34 (e) Attorney general; jurisdiction. The attorney general shall have
35 concurrent jurisdiction with any district attorney in the prosecution of
36 any offenses arising under article thirty-seven of the tax law with
37 respect to the tax imposed under this chapter.

38 § 11-1792 Collection, levy and liens. (a) Collection procedures. The
39 taxes imposed by this chapter shall be collected by the tax commission,
40 and it may establish the mode or time for the collection of any amount
41 due it under this chapter if not otherwise specified. The tax commis-
42 sion shall, upon request, give a receipt for any sum collected under
43 this chapter. The tax commission may authorize banks or trust companies
44 which are depositaries or financial agents of the state to receive and
45 give a receipt for any tax imposed under this chapter in such manner, at
46 such times, and under such conditions as the tax commission may
47 prescribe; and the tax commission shall prescribe the manner, times and
48 conditions under which the receipt of such tax by such banks and trust
49 companies is to be treated as payment of such tax to the tax commission.

50 (b) Notice and demand for tax. The tax commission shall as soon as
51 practicable give notice to each person liable for any amount of tax,
52 addition to tax, penalty or interest, which has been assessed but
53 remains unpaid, stating the amount and demanding payment thereof. Such
54 notice shall be left at the dwelling or usual place of business of such
55 person or shall be sent by mail to such person's last known address.
56 Except where the tax commission determines that collection would be

1 jeopardized by delay, if any tax is assessed prior to the last date,
2 including any date fixed by extension, prescribed for payment of such
3 tax, payment of such tax shall not be demanded until after such date.

4 (c) Issuance of warrant after notice and demand. If any person liable
5 under this chapter for the payment of any tax, addition to tax, penalty
6 or interest neglects or refuses to pay the same within twenty-one calen-
7 dar days after notice and demand therefor is given to such person under
8 subdivision (b) of this section, ten business days if the amount for
9 which such notice and demand is made equals or exceeds one hundred thou-
10 sand dollars, the commissioner of taxation and finance may within six
11 years after the date of such assessment issue a warrant under such
12 commissioner's official seal directed to the sheriff of any county of
13 the state, or to any officer or employee of the department of taxation
14 and finance, commanding him or her to levy upon and sell such person's
15 real and personal property for the payment of the amount assessed, with
16 the cost of executing the warrant, and to return such warrant to such
17 commissioner and pay to him or her the money collected by virtue thereof
18 within sixty days after the receipt of the warrant. If such commissioner
19 finds that the collection of the tax or other amount is in jeopardy,
20 notice and demand for immediate payment of such tax may be made by such
21 commissioner and upon failure or refusal to pay such tax or other amount
22 such commissioner may issue a warrant without regard to the twenty-one
23 day period, or ten-day period if applicable, provided in this subdivi-
24 sion.

25 (d) Copy of warrant to be filed and lien to be created. Any sheriff
26 or officer or employee who receives a warrant under subdivision (c) of
27 this section shall within five days thereafter file a copy with the
28 clerk of the appropriate county. The clerk shall thereupon enter in the
29 judgment docket, in the column for judgment debtors, the name of the
30 taxpayer mentioned in the warrant, and in appropriate columns the tax or
31 other amounts for which the warrant is issued and the date when such
32 copy is filed; and such amount shall thereupon be a lien upon the title
33 to and interest in real, personal and other property of the taxpayer.
34 Such lien shall not apply to personal property unless such warrant is
35 filed in the department of state.

36 (e) Judgment. When a warrant has been filed with the county clerk
37 the tax commission shall, in the right of the city, be deemed to have
38 obtained judgment against the taxpayer for the tax or other amounts.

39 (f) Execution. The sheriff or officer or employee shall thereupon
40 proceed upon the warrant in all respects, with like effect, and in the
41 same manner prescribed by law in respect to executions issued against
42 property upon judgments of a court of record, and a sheriff shall be
43 entitled to the same fees for his or her services in executing the
44 warrant, to be collected in the same manner. An officer or employee of
45 the department of taxation and finance may proceed in any county or
46 counties of this state and shall have all the powers of execution
47 conferred by law upon sheriffs, but shall be entitled to no fee or
48 compensation in excess of actual expenses paid in connection with the
49 execution of the warrant.

50 (g) Taxpayer not a resident. Where a notice and demand under subdivi-
51 sion (b) of this section shall have been given to a taxpayer who is
52 not then a resident, and it appears to the tax commission that it is not
53 practicable to find in this state property of the taxpayer sufficient to
54 pay the entire balance of tax or other amount owing by such taxpayer who
55 is not then a resident, the tax commission may, in accordance with
56 subdivision (c) of this section, issue a warrant directed to an officer

1 or employee of the department of taxation and finance, a copy of which
2 warrant shall be mailed by certified or registered mail to the taxpayer
3 at his or her last known address, subject to the rules for mailing
4 provided in subdivision (a) of section 11-1781 of this subchapter. Such
5 warrant shall command the officer or employee to proceed in Albany coun-
6 ty, and he or she shall, within five days after receipt of the warrant,
7 file the warrant and obtain a judgment in accordance with this section.
8 Thereupon the tax commission may authorize the institution of any action
9 or proceeding to collect or enforce the judgment in any place and by any
10 procedure that a civil judgment of the supreme court of the state of New
11 York could be collected or enforced. The tax commission may also, in
12 its discretion, designate agents or retain counsel for the purpose of
13 collecting, outside the state of New York, any unpaid taxes, additions
14 to tax, penalties or interest which have been assessed under this chap-
15 ter against taxpayers who are not residents of this state, may fix the
16 compensation of such agents and counsel to be paid out of money appro-
17 priated or otherwise lawfully available for payment thereof, and may
18 require of them bonds or other security for the faithful performance of
19 their duties, in such form and in such amount as the tax commission
20 shall deem proper and sufficient.

21 (h) Action by state for recovery of taxes. Action may be brought by
22 the attorney general at the instance of the tax commission in the name
23 of the city or both to recover the amount of any unpaid taxes, additions
24 to tax, penalties or interest which have been assessed under this chap-
25 ter within six years prior to the date the action is commenced.

26 (i) Release of lien. The tax commission, if it finds that the inter-
27 ests of the city will not thereby be jeopardized, and upon such condi-
28 tions as it may require, may release any property from the lien of any
29 warrant for unpaid taxes, additions to tax, penalties and interest filed
30 pursuant to this section, and such release may be recorded in the office
31 of any recording officer in which such warrant has been filed.

32 § 11-1793 Transferees. (a) General. The liability, at law or in
33 equity, of a transferee of property of a taxpayer for any tax, additions
34 to tax, penalty or interest due under this chapter, shall be assessed,
35 paid, and collected in the same manner and subject to the same
36 provisions and limitations as in the case of the tax to which the
37 liability relates, except that the period of limitations for assessment
38 against the transferee shall be extended by one year for each successive
39 transfer, in order, from the original taxpayer to the transferee
40 involved, but not by more than three years in the aggregate. The term
41 transferee includes donee, heir, legatee, devisee and distributee.

42 (b) Exceptions.

43 (1) If before the expiration of the period of limitations for assess-
44 ment of liability of the transferee, a claim has been filed by the tax
45 commission in any court against the original taxpayer or the last
46 preceding transferee based upon the liability of the original taxpayer,
47 then the period of limitation for assessment of liability of the trans-
48 feree shall in no event expire prior to one year after such claim has
49 been finally allowed, disallowed or otherwise disposed of.

50 (2) If, before the expiration of the time prescribed in subdivision
51 (a) or the immediately preceding paragraph of this subdivision for the
52 assessment of the liability, the tax commission and the transferee have
53 both consented in writing to its assessment after such time, the liabil-
54 ity may be assessed at any time prior to the expiration of the period
55 agreed upon. The period so agreed upon may be extended by subsequent
56 agreements in writing made before the expiration of the period previous-

1 ly agreed upon. For the purpose of determining the period of limitation
2 on credit or refund to the transferee of overpayments of tax made by
3 such transferee or overpayments of tax made by the transferor as to
4 which the transferee is legally entitled to credit or refund, such
5 agreement and any extension thereof shall be deemed an agreement and
6 extension thereof referred to in subdivision (b) of section 11-1787 of
7 this subchapter. If the agreement is executed after the expiration of
8 the period of limitation for assessment against the original taxpayer,
9 then in applying the limitations under subdivision (b) of section
10 11-1787 of this subchapter on the amount of the credit or refund, the
11 periods specified in subdivision (a) of section 11-1787 of this subchap-
12 ter shall be increased by the period from the date of such expiration to
13 the date of the agreement.

14 (c) Deceased transferor. If any person is deceased, the period of
15 limitation for assessment against such person shall be the period that
16 would be in effect if he or she had lived.

17 (d) Evidence. Notwithstanding the provisions of subdivision (e) of
18 section 11-1797 of this subchapter the tax commission shall use its
19 powers to make available to the transferee evidence necessary to enable
20 the transferee to determine the liability of the original taxpayer and
21 of any preceding transferees, but without undue hardship to the original
22 taxpayer or preceding transferee. See subdivision (e) of section
23 11-1789 of this subchapter for rule as to burden of proof.

24 § 11-1794 Jeopardy assessment. (a) Authority for making. If the tax
25 commission believes that the assessment or collection of a deficiency
26 will be jeopardized by delay, it shall, notwithstanding the provisions
27 of sections 11-1781 and 11-1796 of this subchapter, immediately assess
28 such deficiency, together with all interest, penalties and additions to
29 tax provided for by law, and notice and demand shall be made by the tax
30 commission for the payment thereof.

31 (b) Notice of deficiency. If the jeopardy assessment is made before
32 any notice in respect of the tax to which the jeopardy assessment
33 relates has been mailed under section 11-1781 of this subchapter, then
34 the tax commission shall mail a notice under such section within sixty
35 days after the making of the assessment.

36 (c) Amount assessable before decision of tax commission. The jeopardy
37 assessment may be made in respect of a deficiency greater or less than
38 that of which notice is mailed to the taxpayer and whether or not the
39 taxpayer has theretofore filed a petition with the tax commission. The
40 tax commission may, at any time before rendering its decision, abate
41 such assessment, or any unpaid portion thereof, to the extent that it
42 believes the assessment to be excessive in amount. The tax commission
43 may in its decision redetermine the entire amount of the deficiency and
44 of all amounts assessed at the same time in connection therewith.

45 (d) Amount assessable after decision of tax commission. If the
46 jeopardy assessment is made after the decision of the tax commission is
47 rendered, such assessment may be made only in respect of the deficiency
48 determined by the tax commission in its decision.

49 (e) Expiration of right to assess. A jeopardy assessment may not be
50 made after the decision of the tax commission has become final or after
51 the taxpayer has made an application for review of the decision of the
52 tax commission.

53 (f) Collection of unpaid amounts. When a petition has been filed with
54 the tax commission and when the amount which should have been assessed
55 has been determined by a decision of the tax commission which has become
56 final, then any unpaid portion, the collection of which has been stayed

1 by bond, shall be collected as part of the tax upon notice and demand
2 from the tax commission, and any remaining portion of the assessment
3 shall be abated. If the amount already collected exceeds the amount
4 determined as the amount which should have been assessed, such excess
5 shall be credited or refunded to the taxpayer as provided in section
6 11-1786 of this subchapter without the filing of claim therefor. If the
7 amount determined as the amount which should have been assessed is
8 greater than the amount actually assessed, then the difference shall be
9 assessed and shall be collected as part of the tax upon notice and
10 demand from the tax commission.

11 (g) Abatement if jeopardy does not exist. The tax commission may
12 abate the jeopardy assessment if it finds that jeopardy does not exist.
13 Such abatement may not be made after a decision of the tax commission in
14 respect of the deficiency has been rendered or, if no petition is filed
15 with the tax commission, after the expiration of the period for filing
16 such petition. The period of limitation on the making of assessments
17 and levy or a proceeding for collection, in respect of any deficiency,
18 shall be determined as if the jeopardy assessment so abated had not been
19 made, except that the running of such period shall in any event be
20 suspended for the period from the date of such jeopardy assessment until
21 the expiration of the tenth day after the day on which such jeopardy
22 assessment is abated.

23 (h) Bond to stay collection. The collection of the whole or any
24 amount of any jeopardy assessment may be stayed by filing with the tax
25 commission, within such time as may be fixed by regulation, a bond in an
26 amount equal to the amount as to which the stay is desired, conditioned
27 upon the payment of the amount, together with interest thereon, the
28 collection of which is stayed at the time at which, but for the making
29 of the jeopardy assessment, such amount would be due. Upon the filing
30 of the bond the collection of so much of the amount assessed as is
31 covered by the bond shall be stayed. The taxpayer shall have the right
32 to waive such stay at any time in respect of the whole or any part of
33 the amount covered by the bond, and if as a result of such waiver any
34 part of the amount covered by the bond is paid, then the bond shall at
35 the request of the taxpayer, be proportionately reduced. If any portion
36 of the jeopardy assessment is abated, or if a notice of deficiency under
37 section 11-1781 of this subchapter is mailed to the taxpayer in a lesser
38 amount, the bond shall, at the request of the taxpayer, be proportion-
39 ately reduced.

40 (i) Petition to tax commission. If the bond is given before the
41 taxpayer has filed his or her petition under section 11-1789 of this
42 subchapter, the bond shall contain a further condition that if a peti-
43 tion is not filed within the period provided in such section, then the
44 amount, the collection of which is stayed by the bond, will be paid on
45 notice and demand at any time after the expiration of such period,
46 together with interest thereon from the date of the jeopardy notice and
47 demand to the date of notice and demand under this subdivision. The
48 bond shall be conditioned upon the payment of so much of such assess-
49 ment, collection of which is stayed by the bond, as is not abated by a
50 decision of the tax commission which has become final. If the tax
51 commission determines that the amount assessed is greater than the
52 amount which should have been assessed, then the bond shall, at the
53 request of the taxpayer, be proportionately reduced when the decision of
54 the tax commission is rendered.

1 (j) Stay of sale of seized property pending tax commission decision.
2 Where a jeopardy assessment is made, the property seized for the
3 collection of the tax shall not be sold:

4 (1) if subdivision (b) of this section is applicable, prior to the
5 issuance of the notice of deficiency and the expiration of the time
6 provided in section 11-1789 of this subchapter for filing a petition
7 with the tax commission, and

8 (2) if a petition is filed with the tax commission, whether before or
9 after the making of such jeopardy assessment, prior to the expiration of
10 the period during which the assessment of the deficiency would be
11 prohibited if subdivision (a) of this section were not applicable.

12 Such property may be sold if the taxpayer consents to the sale, or if
13 the tax commission determines that the expenses of conservation and
14 maintenance will greatly reduce the net proceeds, or if the property is
15 perishable.

16 (k) Interest. For the purpose of subdivision (a) of section 11-1784
17 of this subchapter, the last date prescribed for payment shall be deter-
18 mined without regard to any notice and demand for payment issued under
19 this section prior to the last date otherwise prescribed for such
20 payment.

21 (l) Early termination of taxable year. If the tax commission finds
22 that a taxpayer designs quickly to depart from this state or to remove
23 his or her property therefrom, or to conceal himself or herself or his
24 or her property therein, or to do any other act tending to prejudice or
25 to render wholly or partly ineffectual proceedings to collect the city
26 personal income tax for the current or the preceding taxable year unless
27 such proceedings be brought without delay, the tax commission shall
28 declare the taxable period for such taxpayer immediately terminated, and
29 shall cause notice of such finding and declaration to be given the
30 taxpayer, together with a demand for immediate payment of the tax for
31 the taxable period so declared terminated and of the tax for the preced-
32 ing taxable year or so much of such tax as is unpaid, whether or not the
33 time otherwise allowed by law for filing return and paying the tax has
34 expired; and such taxes shall thereupon become immediately due and paya-
35 ble. In any proceeding brought to enforce payment of taxes made due and
36 payable by virtue of the provisions of this subdivision, the finding of
37 the tax commission made as herein provided, whether made after notice to
38 the taxpayer or not, shall be for all purposes presumptive evidence of
39 jeopardy.

40 (m) Reopening of taxable period. Notwithstanding the termination of
41 the taxable period of the taxpayer by the tax commission, as provided in
42 subdivision (l) of this section, the tax commission may reopen such
43 taxable period each time the taxpayer is found by the tax commission to
44 have received income, within the current taxable year, since the termi-
45 nation of such period. A taxable period so terminated by the tax
46 commission may be reopened by the taxpayer if he or she files with the
47 tax commission a true and accurate return of taxable income and credits
48 allowed under this chapter for such taxable period, together with such
49 other information as the tax commission may by regulations prescribe.

50 (n) Furnishing of bond where taxable year is closed by the tax
51 commission. Payment of taxes shall not be enforced by any proceedings
52 under the provisions of subdivision (l) of this section prior to the
53 expiration of the time otherwise allowed for paying such taxes if the
54 taxpayer furnishes, under regulations prescribed by the tax commission,
55 a bond to insure the timely making of returns with respect to, and

1 payment of, such taxes or any city personal income taxes for prior
2 years.

3 § 11-1795 Criminal penalties; cross-reference. For criminal penal-
4 ties, see article thirty-seven of the tax law.

5 § 11-1796 Income taxes of members of armed forces and victims of
6 certain terrorist attacks. (a) Time to be disregarded. In the case of
7 an individual serving in the armed forces of the United States, or serv-
8 ing in support of such armed forces, in an area designated by the presi-
9 dent of the United States by executive order as a "combat zone" at any
10 time during the period designated by the president by executive order as
11 the period of combatant activities in such zone, or hospitalized inside
12 or outside the state as a result of injury received while serving in
13 such an area during such time, the period of service in such area, plus
14 the period of continuous hospitalization inside or outside the state
15 attributable to such injury, and the next one hundred eighty days there-
16 after, shall be disregarded in determining, under this chapter, in
17 respect of the city personal income tax liability, including any inter-
18 est, penalty, or addition to the tax, of such individual:

19 (1) Whether any of the following acts was performed within the time
20 prescribed therefor:

21 (A) filing any return of income tax, except withholding tax;

22 (B) payment of any income tax, except withholding tax, or any install-
23 ment thereof or of any other liability in respect thereof;

24 (C) filing a petition with the tax commission for credit or refund or
25 for redetermination of a deficiency, or application for review of a
26 decision rendered by the tax commission;

27 (D) allowance of a credit or refund of city personal income tax;

28 (E) filing a claim for credit or refund of city personal income tax;

29 (F) assessment of city personal income tax;

30 (G) giving or making any notice or demand for the payment of any city
31 personal income tax, or with respect to any liability to the city in
32 respect of such income tax;

33 (H) collection, by the tax commission, by levy or otherwise of the
34 amount of any liability in respect of such income tax;

35 (I) bringing suit by the city, the state, or any officer, on their
36 behalf, in respect of any liability in respect of such income tax; and

37 (J) any other act required or permitted under this chapter or speci-
38 fied in regulations prescribed under this section by the tax commission.

39 (2) The amount of any credit or refund.

40 (b) Special rule for overpayments. (1) Subdivision (a) of this section
41 shall not apply for purposes of determining the amount of interest on
42 any overpayment of tax.

43 (2) If an individual is entitled to the benefits of subdivision (a) of
44 this section with respect to any return, amended return, or claim for
45 credit or refund, and such return, amended return or claim is timely
46 filed, determined after the application of such subdivision, paragraph
47 three of subdivision (a) and subdivision (c) of section 11-1788 of this
48 subchapter of this title shall not apply.

49 (c) Action taken before ascertainment of right to benefits. The
50 assessment or collection of the tax imposed by this chapter or of any
51 liability in respect of such tax, or any action or proceeding by or on
52 behalf of the city in connection therewith, may be made, taken, begun,
53 or prosecuted in accordance with law, without regard to the provisions
54 of subdivision (a) of this section, unless prior to such assessment,
55 collection, action, or proceeding it is ascertained that the person

1 concerned is entitled to the benefits of subdivision (a) of this
2 section.

3 (d) Members of armed forces dying in action. In the case of any person
4 who dies while in active service as a member of the armed forces of the
5 United States, if such death occurred while serving in a combat zone
6 during a period of combatant activities in such zone, as described in
7 subdivision (a) of this section, or as a result of wounds, disease or
8 injury incurred while so serving, the tax imposed by this chapter shall
9 not apply with respect to the taxable year in which falls the date of
10 his or her death, or with respect to any prior taxable year ending on or
11 after the first day so served in a combat zone, and no returns shall be
12 required in behalf of such person or his or her estate for such year;
13 and the tax for any such taxable year which is unpaid at the date of
14 death, including interest, additions to tax and penalties, if any, shall
15 not be assessed and, if assessed, the assessment shall be abated and, if
16 collected, shall be refunded to the legal representative of such estate
17 if one has been appointed and has qualified, or, if no legal represen-
18 tative has been appointed or has qualified, to the surviving spouse.

19 (e) Treatment of individuals performing Desert Shield services. (1)
20 Any individual who performed Desert Shield services shall be entitled to
21 the benefits of subdivisions (a) and (b) of this section in the same
22 manner as if such services were services referred to in subdivision (a)
23 of this section.

24 (2) For purposes of this subdivision, the term "Desert Shield
25 services" means any services in the armed forces of the United States or
26 in support of such armed forces if

27 (A) such services are performed in the area designated by the presi-
28 dent of the United States as the "Persian Gulf Desert Shield area", and

29 (B) such services are performed during the period beginning on August
30 second, nineteen hundred ninety, and ending on the date on which any
31 portion of the area referred to in subparagraph (A) of this paragraph is
32 designated by the president as a combat zone pursuant to section one
33 hundred twelve of the internal revenue code.

34 (f) Relief for personnel under hostile fire. For purposes of this
35 section, members of the armed forces of the United States who perform
36 military service in an area outside an area designated by the president
37 of the United States by executive order as a "combat zone", which
38 service is in direct support of military operations in such zone and is
39 performed under conditions which qualify such members for hostile fire
40 pay, as authorized under subdivision (a) of section nine of the federal
41 uniformed services pay act of nineteen hundred sixty-three, shall,
42 during the period of such qualifying service, be deemed to have served
43 in such combat zone.

44 (g) Application to spouse. The provisions of subdivisions (a), (b),
45 (c), (e) and (f) of this section shall apply to the spouse of any indi-
46 vidual entitled to the benefits of subdivision (a) of this section;
47 provided, however, that such subdivisions shall not apply for any spouse
48 for any taxable year beginning more than two years after the date desig-
49 nated under section one hundred twelve of the internal revenue code as
50 the date of termination of combatant activities in a combat zone.

51 (h) Individuals dying as a result of certain attacks. (1) General. In
52 the case of a specified terrorist victim, any tax imposed by this chap-
53 ter shall not apply: (A) with respect to the taxable year in which
54 falls the date of death; and (B) with respect to any prior taxable year
55 in the period beginning with the last taxable year ending before the

1 taxable year in which the wounds or injury referred to in paragraph
2 three of this subdivision were incurred.

3 (2) Taxation of certain benefits. Paragraph one of this subdivision
4 shall not apply to the amount of any tax imposed by this chapter which
5 would be computed by only taking into account the items of income, gain,
6 or other amounts determined by the United States secretary of the treas-
7 ury to be taxable pursuant to paragraph three of subdivision (d) of
8 section six hundred ninety-two of the internal revenue code.

9 (3) Specified terrorist victim. For purposes of this subdivision, the
10 term "specified terrorist victim" means any decedent who dies as a
11 result of wounds or injury incurred as a result of the terrorist attacks
12 against the United States on September eleventh, two thousand one,
13 provided, however, such term shall not include any individual identified
14 by the attorney general of the United States to have been a participant
15 or conspirator in any such attack or a representative of such an indi-
16 vidual.

17 § 11-1797 General powers of tax commission. (a) General. The tax
18 commission shall administer and enforce the tax imposed by this chapter
19 and it is authorized to make such rules and regulations, and to require
20 such facts and information to be reported, as it may deem necessary to
21 enforce the provisions of this chapter.

22 (b) Examination of books and witnesses. (1) The tax commission for the
23 purpose of ascertaining the correctness of any return, or for the
24 purpose of making an estimate of taxable income of any person, shall
25 have power to examine or to cause to have examined, by any agent or
26 representative designated by it for that purpose, any books, papers,
27 records or memoranda bearing upon the matters required to be included in
28 the return, and may require the attendance of the person rendering the
29 return or any officer or employee of such person, or the attendance of
30 any other person having knowledge in the premises, and may take testimo-
31 ny and require proof material for its information, with power to admin-
32 ister oaths to such person or persons.

33 (2) The tax commission may take any action under paragraph one of this
34 subdivision to inquire into the commission of any offense connected with
35 the administration or enforcement of this chapter, provided, however,
36 that notwithstanding the provisions of section 11-1774 of this chapter
37 no such action shall be taken after a referral by the department or the
38 tax commission to the attorney general, a district attorney or any other
39 prosecutorial agency is in effect.

40 (c) Abatement authority. The tax commission, of its own motion, may
41 abate any small unpaid balance of an assessment of city personal income
42 tax, or any liability in respect thereof, if the tax commission deter-
43 mines under uniform rules prescribed by it that the administration and
44 collection costs involved would not warrant collection of the amount
45 due. It may also abate, of its own motion, the unpaid portion of the
46 assessment of any tax or any liability in respect thereof, which is
47 excessive in amount, or is assessed after the expiration of the period
48 of limitation properly applicable thereto, or is erroneously or illegal-
49 ly assessed. No claim for abatement under this subdivision shall be
50 filed by a taxpayer.

51 (d) Special refund authority. Where no questions of fact or law are
52 involved and it appears from the records of the tax commission that any
53 moneys have been erroneously or illegally collected from any taxpayer or
54 other person, or paid by such taxpayer or other person under a mistake
55 of facts, pursuant to the provisions of this chapter, the tax commission
56 at any time, without regard to any period of limitations, shall have the

1 power, upon making a record of its reasons therefor in writing, to cause
2 such moneys so paid and being erroneously and illegally held to be
3 refunded and to issue therefor its certificate to the comptroller.

4 (e) Secrecy requirement and penalties for violation. (1) Except in
5 accordance with proper judicial order or as otherwise provided by law,
6 it shall be unlawful for the tax commission, any tax commissioner, any
7 officer or employee of the department of taxation and finance, any
8 person engaged or retained by such department on an independent contract
9 basis, any depository to which any return may be delivered as provided
10 in subdivision (h) or (i) of this section, any officer or employee of
11 such depository, or any person who, pursuant to this section, is permit-
12 ted to inspect any report or return or to whom a copy, an abstract or a
13 portion of any report or return is furnished, or to whom any information
14 contained in any report or return is furnished, to divulge or make known
15 in any manner the amount of income or any particulars set forth or
16 disclosed in any report or return required under this chapter.

17 (2) The officers charged with the custody of such reports and returns
18 shall not be required to produce any of them or evidence of anything
19 contained in them in any action or proceeding in any court, except on
20 behalf of the tax commission in an action or proceeding under the
21 provisions of this chapter, the tax law or in any other action or
22 proceeding involving the collection of a tax due under this chapter or
23 such tax law to which the city, state or the tax commission is a party
24 or a claimant, or on behalf of any party to any action or proceeding
25 under the provisions of this chapter when the reports, returns or facts
26 shown thereby are directly involved in such action or proceeding, in any
27 of which events the court may require the production of, and may admit
28 in evidence, so much of said reports, returns or of the facts shown
29 thereby, as are pertinent to the action or proceeding and no more. The
30 tax commission may, nevertheless, publish a copy or a summary of any
31 decision rendered after the hearing required under section 11-1789 of
32 this subchapter.

33 (3) Nothing in this section shall be construed to prohibit the deliv-
34 ery by the state commissioner of taxation and finance to the county
35 clerk of a county within the city of New York of a mailing list of indi-
36 viduals to whom income tax forms are mailed by the state commissioner of
37 taxation and finance for the sole purpose of compiling a list of
38 prospective jurors as provided in article sixteen of the judiciary law.
39 Provided, however, such delivery shall only be made pursuant to an order
40 of the chief administrator of the courts, appointed pursuant to section
41 two hundred ten of such law. No such order may be issued unless such
42 chief administrator is satisfied that such mailing list is needed to
43 compile a proper list of prospective jurors for the county for which
44 such order is sought and that, in view of the responsibilities imposed
45 by the various laws of the state on the department of taxation and
46 finance, it is reasonable to require the state commissioner of taxation
47 and finance to furnish such list. Such order shall provide that such
48 list shall be used for the sole purpose of compiling a list of prospec-
49 tive jurors and that such county clerk shall take all necessary steps to
50 insure that the list is kept confidential and that there is no unauthor-
51 ized use or disclosure of such list. Furthermore, nothing in this
52 section shall be construed to prohibit the delivery to a taxpayer or his
53 or her duly authorized representative of a certified copy of any return
54 or report filed in connection with his or her tax or to prohibit the
55 publication of statistics so classified as to prevent the identification
56 of particular reports or returns and the items thereof, or the

1 inspection by the attorney general or other legal representatives of the
2 state or city of the report or return of any taxpayer who shall bring
3 action to set aside or review the tax based thereon, or against whom an
4 action or proceeding under this chapter has been recommended by the
5 commissioner of taxation and finance, the corporation counsel or the
6 attorney general or has been instituted, or the inspection of the
7 reports or returns required under this chapter by the comptroller or
8 duly designated officer or employee of the state department of audit and
9 control, for purposes of the audit of a refund of any tax paid by a
10 taxpayer under this chapter, or the furnishing to the state department
11 of social services of the amount of an overpayment of tax and interest
12 thereon certified to the comptroller to be credited against past-due
13 support pursuant to section one hundred seventy-one-c of the tax law and
14 of the name and social security number of the taxpayer who made such
15 overpayment or the furnishing to the New York state higher education
16 services corporation of the amount of an overpayment of tax and interest
17 thereon certified to the comptroller to be credited against the amount
18 of a default in repayment of a guaranteed student loan pursuant to
19 section one hundred seventy-one-d of the tax law and of the name and
20 social security number of the taxpayer who made such overpayment or the
21 furnishing to the state university of New York or the city university of
22 New York or the attorney general on behalf of such state or city univer-
23 sity the amount of an overpayment of tax and interest thereon certified
24 to the comptroller to be credited against the amount of a default in
25 repayment of a state university loan or city university loan pursuant to
26 section one hundred seventy-one-e of the tax law and of the name and
27 social security number of the taxpayer who made such overpayment, or the
28 disclosing to a state agency, pursuant to section one hundred seventy-
29 one-f of the tax law, of the amount of an overpayment and interest ther-
30 eon certified to the comptroller to be credited against a past-due
31 legally enforceable debt owed to such agency and of the name and social
32 security number of the taxpayer who made such overpayment, or the
33 disclosing to the commissioner of finance of the city of New York,
34 pursuant to section one hundred seventy-one-l of the tax law, of the
35 amount of an overpayment and interest thereon certified to the comp-
36 troller to be credited against a city of New York tax warrant judgment
37 debt and of the name and social security number of the taxpayer who made
38 such overpayment. Reports and returns shall be preserved for three years
39 and thereafter until the state commissioner of taxation and finance
40 orders them to be destroyed.

41 (3-a) Notwithstanding the provisions of paragraph one of this subdivi-
42 sion, the state commissioner of taxation and finance or the commissioner
43 of finance may disclose to a taxpayer or a taxpayer's related member, as
44 defined in subdivision (t) of section 11-1712 of this chapter, informa-
45 tion relating to any royalty paid, incurred or received by such taxpayer
46 or related member to or from the other, including the treatment of such
47 payments by the taxpayer or the related member in any report or return
48 transmitted to the state commissioner of taxation and finance under this
49 chapter or the New York state tax law or the commissioner of finance
50 under this title.

51 (4) (A) Any officer or employee of the state, who willfully violates
52 the provisions of this subdivision shall be dismissed from office and be
53 incapable of holding any public office in this state for a period of
54 five years thereafter.

55 (B) Cross-reference: For criminal penalties, see article thirty-seven
56 of the tax law.

1 (f) Cooperation with the United States and other states. Notwith-
2 standing the provisions of subdivision (e) of this section, the tax
3 commission may permit the secretary of the treasury of the United States
4 or his or her delegates, or the proper tax officer of any state imposing
5 an income tax upon the incomes of individuals, or the authorized repre-
6 sentative of either such officer, to inspect any return filed under this
7 chapter, or may furnish to such officer or his or her authorized repre-
8 sentative an abstract of any such return or supply him or her with
9 information concerning an item contained in any such return, or
10 disclosed by any investigation of tax liability under this chapter, but
11 such permission shall be granted or such information furnished to such
12 officer or his or her representative only if the laws of the United
13 States or of such other state, as the case may be, grant substantially
14 similar privileges to the commission or officer of this state charged
15 with the administration of the tax imposed by this chapter and such
16 information is to be used for tax purposes only; and provided further
17 the commissioner of taxation and finance may furnish to the commissioner
18 of internal revenue or his or her authorized representative such returns
19 filed under this chapter and other tax information, as he or she may
20 consider proper, for use in court actions or proceedings under the
21 internal revenue code, whether civil or criminal, where a written
22 request therefor has been made to the commissioner of taxation and
23 finance by the secretary of the treasury of the United States or his or
24 her delegates, provided the laws of the United States grant substantial-
25 ly similar powers to the secretary of the treasury of the United States
26 or his or her delegates. Where the commissioner of taxation and finance
27 has so authorized use of returns and other information in such actions
28 or proceedings, officers and employees of the department of taxation and
29 finance may testify in such actions or proceedings in respect to such
30 returns or other information.

31 (g) Cooperation with the cities of the state of New York. Notwith-
32 standing the provisions of subdivision (e) of this section, the tax
33 commission may permit the proper city officer of any city of the state
34 of New York imposing a personal income tax upon the incomes of resi-
35 dents, or an unincorporated business income tax, or an earnings tax on
36 nonresidents, or the authorized representative of any such officer, to
37 inspect any return filed under this chapter, or may furnish to such
38 officer or his or her authorized representative an abstract of any such
39 return or supply him or her with information concerning an item
40 contained in any such return, or disclosed by any investigation of tax
41 liability under this chapter, but such permission shall be granted or
42 such information furnished to such officer or his or her representative
43 only if the local laws of such city grant substantially similar privi-
44 leges to the commission or officer of this state charged with the admin-
45 istration of the tax imposed by this chapter and such information is to
46 be used for tax purposes only; and provided further the commissioner of
47 taxation and finance may furnish to such city officer or the legal
48 representative of such city such returns filed under this chapter and
49 other tax information, as he or she may consider proper, for use in
50 court actions or proceedings under such local law, whether civil or
51 criminal, where a written request therefor has been made to the commis-
52 sioner of taxation and finance by such city officer or his or her dele-
53 gate, provided the local law of such city grants substantially similar
54 powers to such city officer or his or her delegate. Where the commis-
55 sioner of taxation and finance has so authorized use of returns and
56 other information in such actions or proceedings, officers and employees

1 of the department of taxation and finance may testify in such actions or
2 proceedings in respect to such returns or other information.

3 (h) Withholding returns. Notwithstanding the provisions of subdivision
4 (e) of this section the tax commission in its discretion, when making
5 deposits, pursuant to section 11-1798 of this subchapter, of taxes with-
6 held by employers, may deliver to the depository the withholding returns
7 filed by such employers as provided in section 11-1774 of this chapter,
8 for the purpose of insuring that all money so deposited shall be
9 correctly credited to taxpayers' accounts.

10 (i) Filing returns and making payments to depository banks. Notwith-
11 standing the provisions of subdivision (e) of this section, the tax
12 commission, in its discretion, may require or permit any or all individ-
13 uals, estates or trusts liable for any tax imposed by this chapter, to
14 make payments on account of estimated tax and payment of any tax, penal-
15 ty or interest imposed by this chapter to banks, banking houses or trust
16 companies designated by the tax commission and to file reports and
17 returns with such banks, banking houses or trust companies as agents of
18 the tax commission, in lieu of making any such payment to the tax
19 commission. However, the tax commission shall designate only such banks,
20 banking houses or trust companies as are or shall be designated by the
21 comptroller as depositories pursuant to section 11-1798 of this subchap-
22 ter.

23 (j) (1) Authority to set interest rates. The commissioner of taxation
24 and finance shall set the overpayment and underpayment rates of interest
25 to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this
26 subchapter, but if no such rates of interest are set, such overpayment
27 rate shall be deemed to be set at six percent per annum and the under-
28 payment rate shall be deemed to be set at seven and one-half per annum.
29 Such rates shall be the rates prescribed by paragraphs two and four of
30 this subdivision, but shall not be less than seven and one-half percent
31 per annum. Any such rates set by such commissioner shall apply to taxes,
32 or any portion thereof, which remain or become due or overpaid on or
33 after the date on which such rates become effective and shall apply only
34 with respect to interest computed or computable for periods or portions
35 of periods occurring in the period during which such rates are in
36 effect.

37 (1) Authority to set interest rates. The commissioner of taxation and
38 finance shall set the overpayment and underpayment rates of interest to
39 be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this
40 subchapter, but if no such rates of interest are set, such rates shall
41 be deemed to be set at six percent per annum. Such rates shall be the
42 rates prescribed by paragraphs two and four of this subdivision, but the
43 underpayment rate shall not be less than six percent per annum. Any such
44 rates set by such commissioner shall apply to taxes, or any portion
45 thereof, which remain or become due or overpaid on or after the date on
46 which such rates become effective and shall apply only with respect to
47 interest computed or computable for periods or portions of periods
48 occurring in the period during which such rates are in effect.

49 (2) Rates of interest. (A) Overpayment rate. The overpayment rate of
50 interest set under this subdivision shall be the sum of (i) the federal
51 short-term rate as provided under paragraph three of this subdivision,
52 plus (ii) two percentage points.

53 (B) Underpayment rate. The underpayment rate of interest set under
54 this subdivision shall be the sum of (i) the federal short-term rate as
55 provided under paragraph three of this subdivision, plus (ii) five and
56 one-half percentage points.

- 1 (3) Federal short-term rate. For the purposes of this subdivision:
2 (A) The federal short-term rate for any month shall be the federal
3 short-term rate determined by the United States secretary of the treas-
4 ury during such month in accordance with subsection (d) of section
5 twelve hundred seventy-four of the internal revenue code for use in
6 connection with section six thousand six hundred twenty-one of the
7 internal revenue code. Any such rate shall be rounded to the nearest
8 full percent, or, if a multiple of one-half of one percent, such rate
9 shall be increased to the next highest full percent.
- 10 (B) Period during which rate applies.
- 11 (i) In general. Except as provided in clauses (ii) and (iii) of this
12 subparagraph, the federal short-term rate for the first month in each
13 calendar quarter shall apply during the first calendar quarter beginning
14 after such month.
- 15 (ii) Special rule for individual estimated tax. In determining the
16 addition to tax under subdivision (c) of section 11-1785 of this
17 subchapter for failure to pay estimated tax for any taxable year, the
18 federal short-term rate which applies during the third month following
19 the taxable year shall also apply during the first fifteen days of the
20 fourth month following such taxable year.
- 21 (iii) Special rule for the month of September, nineteen hundred eight-
22 y-nine. The federal short-term rate for the month of April, nineteen
23 hundred eighty-nine shall apply with respect to setting the rate of
24 interest for the month of September, nineteen hundred eighty-nine.
- 25 (4) Notwithstanding the provisions of paragraph two of this subdivi-
26 sion to the contrary, in the case of interest payable by an employer
27 with respect to income taxes required to be withheld and paid over by
28 him or her pursuant to the provisions of subchapter four of this chapter
29 and with respect to interest payable to an employer pursuant to subdivi-
30 sion (c) of section 11-1786 of this subchapter, the rates of interest
31 prescribed by this section shall be the overpayment and underpayment
32 rates of interest prescribed in paragraph two of subsection (e) of
33 section one thousand ninety-six of the tax law.
- 34 (5) In computing the amount of any interest required to be paid under
35 this article by the commissioner of taxation and finance or by the
36 taxpayer, or any other amount determined by reference to such amount of
37 interest, such interest and such amount shall be compounded daily. The
38 provisions of this paragraph shall not apply for purposes of computing
39 the amount of any addition to tax for failure to pay estimated tax under
40 subdivision (c) of section 11-1785 of this subchapter.
- 41 (6) Publication of interest rates. The commissioner of taxation and
42 finance shall cause to be published in the section for miscellaneous
43 notices in the state register, and give other appropriate general notice
44 of, the interest rates to be set under this subdivision no later than
45 twenty days preceding the first day of the calendar quarter during which
46 such interest rates apply. The setting and publication of such interest
47 rates shall not be included within paragraph (a) of subdivision two of
48 section one hundred two of the state administrative procedure act relat-
49 ing to the definition of a rule.
- 50 (7) Cross-reference. For provisions relating to the power of the
51 commissioner of taxation and finance to abate small amounts of interest,
52 see subdivision (c) of this section.
- 53 (k) Disclosure of collection activities with respect to joint return.
54 Notwithstanding the provisions of subdivision (e) of this section, if
55 any deficiency of tax with respect to a joint return is assessed and the
56 individuals filing such return are no longer married or no longer reside

1 in the same household, upon request in writing by either of such indi-
2 viduals, the commissioner of taxation and finance shall disclose in
3 writing to the individual making the request whether such commissioner
4 has attempted to collect such deficiency from such other individual, the
5 general nature of such collection activities, and the amount collected.

6 The opening paragraph of this subdivision shall not apply to any defi-
7 ciency which may not be collected by reason of expiration of time within
8 which to issue a warrant under subdivision (c) of section 11-1792 of
9 this subchapter or within which to collect such tax by execution and
10 levy or by court proceeding.

11 (l) Disclosure of certain information where more than one person is
12 subject to penalty. If the commissioner of taxation and finance deter-
13 mines that a person is liable for a penalty under subdivision (g) of
14 section 11-1785 of this subchapter with respect to any failure, upon
15 request in writing of such person, such commissioner shall disclose in
16 writing to such person (1) the name of any other person whom such
17 commissioner has determined to be liable for such penalty with respect
18 to such failure, and (2) whether such commissioner has attempted to
19 collect such penalty from such other person, the general nature of such
20 collection activities, and the amount collected.

21 (m) (1) Notwithstanding the provisions of subdivision (e) of this
22 section, upon written request from the chairperson of the committee on
23 ways and means of the United States House of Representatives, the chair-
24 person of the committee on finance of the United States Senate, or the
25 chairperson of the joint committee on taxation of the United States
26 Congress, the commissioner of taxation and finance shall furnish such
27 committee with any current or prior year returns specified in such
28 request that were filed under this article by the president of the
29 United States, vice-president of the United States, member of the United
30 States Congress representing New York state, or any person who served in
31 or was employed by the executive branch of the government of the United
32 States on the executive staff of the president, in the executive office
33 of the president, or in an acting or confirmed capacity in a position
34 subject to confirmation by the United States senate; or, in New York
35 state: a statewide elected official, as defined in paragraph (a) of
36 subdivision one of section seventy-three-a of the public officers law; a
37 state officer or employee, as defined in subparagraph (i) of paragraph
38 (c) of subdivision one of such section seventy-three-a; a political
39 party chairperson, as defined in paragraph (h) of subdivision one of
40 such section seventy-three-a; a local elected official, as defined in
41 subdivisions one and two of section eight hundred ten of the general
42 municipal law; a person appointed, pursuant to law, to serve due to
43 vacancy or otherwise in the position of a local elected official, as
44 defined in subdivisions one and two of section eight hundred ten of the
45 general municipal law; a member of the state legislature; or a judge or
46 justice of the unified court system; provided however that, prior to
47 furnishing any return, the commissioner shall redact any copy of a
48 federal return, or portion thereof, attached to, or any information on a
49 federal return that is reflected on, such return, and any social securi-
50 ty numbers, account numbers and residential address information.

51 (2) No returns shall be furnished pursuant to this subdivision unless
52 the chairperson of the requesting committee certifies in writing that
53 such returns have been requested related to, and in furtherance of, a
54 legitimate task of the Congress, that the requesting committee has made
55 a written request to the United States secretary of the treasury for
56 related federal reports or returns or report or return information,

1 pursuant to 26 U.S.C. Section 6103(f), and that if such requested
2 returns are inspected by and/or submitted to another committee, to the
3 United States House of Representatives, or to the United States Senate,
4 then such inspection and/or submission shall occur in a manner consist-
5 ent with federal law as informed by the requirements and procedures
6 established in 26 U.S.C. Section 6103(f).

7 § 11-1798 Deposit and disposition of revenues. All revenue collected
8 by the state commissioner of taxation and finance from the taxes imposed
9 pursuant to this chapter or chapter nineteen of this title shall be
10 deposited daily with such responsible banks, banking houses or trust
11 companies, as may be designated by the state comptroller, to the credit
12 of the comptroller, in trust for the city. Such deposits shall be kept
13 in trust and separate and apart from all other moneys in the possession
14 of the comptroller. The state comptroller shall require adequate securi-
15 ty from all such depositories of such revenue collected by the state
16 commissioner of taxation and finance. The state comptroller shall retain
17 in his or her hands such amounts as the commissioner of taxation and
18 finance may determine to be necessary for refunds in respect to the
19 taxes imposed by this chapter and such chapter nineteen and for reason-
20 able costs of the state commissioner of taxation and finance in adminis-
21 tering, collecting and distributing such taxes, out of which the comp-
22 troller shall pay any refunds of such taxes to which taxpayers shall be
23 entitled under this chapter and such chapter nineteen and except further
24 that he or she shall pay to a non-obligated spouse that amount of over-
25 payment of tax imposed pursuant to the authority of article thirty of
26 the tax law or former article two-E of the general city law and the
27 interest on such amount which has been credited pursuant to section one
28 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-
29 one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax
30 law and which is certified to him or her by the commissioner of taxation
31 and finance as the amount due such non-obligated spouse pursuant to
32 paragraph six of subsection (b) of section six hundred fifty-one of the
33 tax law, and he or she shall deduct a like amount which he shall pay
34 into the treasury to the credit of the general fund from amounts subse-
35 quently payable to the department of social services, the state univer-
36 sity of New York, the city university of New York, the higher education
37 services corporation, or to the revenue arrearage account or special
38 offset fiduciary account pursuant to section ninety-one-a or
39 ninety-one-c of the state finance law, as the case may be, whichever had
40 been credited the amount originally withheld from such overpayment and,
41 with respect to amounts originally withheld from such overpayment pursu-
42 ant to section one hundred seventy-one-l of the tax law and paid to the
43 city of New York, the comptroller shall collect a like amount from the
44 city of New York. The state comptroller, after reserving such refund
45 fund and such costs shall, on or before the fifteenth day of each month,
46 pay to the chief fiscal officer of the city the balance of such taxes
47 collected, to be paid into the treasury of the city to the credit of the
48 general fund except that he or she shall pay to the state department of
49 social services that amount of overpayments of the taxes imposed pursu-
50 ant to this chapter or chapter nineteen of this title and the interest
51 on such amount which is certified to him or her by the state commission-
52 er of taxation and finance as the amount to be credited against past-due
53 support pursuant to subdivision six of section one hundred seventy-one-c
54 of the tax law and except that he or she shall pay to the New York state
55 higher education services corporation that amount of overpayments of the
56 taxes imposed pursuant to this chapter or chapter nineteen of this title

1 and the interest on such amount which is certified to him or her by the
2 state commissioner of taxation and finance as the amount to be credited
3 against the amount of defaults in repayment of guaranteed student loans
4 pursuant to subdivision five of section one hundred seventy-one-d of the
5 tax law and except that he or she shall pay to the state university of
6 New York or the city university of New York, respectively, that amount
7 of overpayments of the taxes imposed pursuant to this chapter or chapter
8 nineteen of this title and the interest on such amount which is certi-
9 fied to him or her by the state commissioner of taxation and finance as
10 the amount to be credited against the amount of defaults in repayment of
11 state university or city university loans pursuant to subdivision six of
12 section one hundred seventy-one-e of the tax law, and except further
13 that, notwithstanding any other provision of law, he or she shall credit
14 to the revenue arrearage account, pursuant to section ninety-one-a of
15 the state finance law, that amount of overpayments of the taxes imposed
16 pursuant to this chapter or chapter nineteen of this title and the
17 interest on such amount which is certified to him or her by the state
18 commissioner of taxation and finance as the amount to be credited
19 against a past-due legally enforceable debt owed to a state agency
20 pursuant to paragraph (a) of subdivision six of section one hundred
21 seventy-one-f of the tax law, provided, however, he or she shall credit
22 to the special offset fiduciary account, pursuant to section
23 ninety-one-c of the state finance law, any such amount creditable as a
24 liability as set forth in paragraph (b) of subdivision six of section
25 one hundred seventy-one-f of the tax law, and except further that he or
26 she shall pay to the city of New York that amount of overpayments of tax
27 imposed pursuant to this chapter or chapter nineteen of this title and
28 the interest on such amount which is certified to him or her by the
29 state commissioner of taxation and finance as the amount to be credited
30 against city of New York tax warrant judgment debt pursuant to section
31 one hundred seventy-one-l of the tax law. The amount deducted for admin-
32 istering, collecting and distributing such taxes during such monthly
33 period shall be paid by the state comptroller into the general fund of
34 the state treasury to the credit of the state purposes fund therein. The
35 first payment to such chief fiscal officer shall be made on or before
36 March fifteenth, nineteen hundred seventy-six, which payment shall
37 represent the balance of revenue after provision for refund and such
38 reasonable costs, with respect to taxes collected from January first,
39 nineteen hundred seventy-six through February twenty-ninth, nineteen
40 hundred seventy-six. Subsequent payments shall be made on or before
41 April fifteenth, nineteen hundred seventy-six and on or before the
42 fifteenth day of each succeeding month thereafter, and shall represent
43 the balance of revenue with respect to taxes collected the preceding
44 calendar month. The amounts so payable shall be certified to the state
45 comptroller by the state commissioner of taxation and finance or his or
46 her delegate, either of whom shall not be held liable for any inaccuracy
47 in such certificate. Where the amount so paid over to such chief fiscal
48 officer is more or less than the amount then due such city, the amount
49 of overpayment or underpayment shall be certified to the state comp-
50 troller by the state commissioner of taxation and finance or his or her
51 delegate, either of whom shall not be held liable for any inaccuracy in
52 such certificate. The amount of overpayment or underpayment shall be so
53 certified to the state comptroller as soon after the discovery of the
54 overpayment or underpayment as reasonably possible and subsequent
55 payments by the state comptroller to such chief fiscal officer shall be
56 adjusted by subtracting the amount of any such overpayment from, or by

1 adding the amount of any such underpayment to such number of subsequent
2 payments and distributions as the state comptroller and the state
3 commissioner of taxation and finance shall consider reasonable in view
4 of the amount of the overpayment or underpayment and all other facts and
5 circumstances.

6 § 11-1800 Enforcement with other taxes. (a) If there is assessed a
7 tax under this chapter and there is also assessed a tax or taxes against
8 the same taxpayer pursuant to article twenty-two of the tax law or under
9 chapter nineteen of this title and if the tax commission takes action
10 under such article twenty-two or under such chapter nineteen with
11 respect to the enforcement and collection of the tax or taxes assessed
12 under such articles or chapter, the tax commission shall, wherever
13 possible, accompany such action with a similar action under similar
14 enforcement and collection provisions of this chapter.

15 (b) Any moneys collected as a result of such joint action shall be
16 deemed to have been collected in proportion to the amounts due, includ-
17 ing tax, penalties, interest and additions to tax, under article twen-
18 ty-two of the tax law and this city income tax.

19 (c) Whenever the tax commission takes any action with respect to a
20 deficiency of income tax under article twenty-two of the tax law or
21 under chapter nineteen of this title, other than the action set forth in
22 subdivision (a) of this section, it may in its discretion accompany such
23 action with a similar action under such city income tax.

24 § 11-1801 Administration, collection and review. (a) Except as other-
25 wise provided in this chapter, any tax imposed by this chapter shall be
26 administered and collected by the tax commission in the same manner as
27 the tax imposed by article twenty-two of the tax law is administered and
28 collected by such commission. Whenever there is joint collection of
29 state and city personal income taxes, it shall be deemed that such
30 collections shall represent proportionately the applicable state and
31 city personal income taxes in determining the amount to be remitted to
32 the city.

33 (b) The tax commission, in its discretion, may require or permit any
34 or all persons liable for any tax imposed by this chapter to make
35 payments on account of estimated tax and payment of any tax, penalty or
36 interest to such banks, banking houses or trust companies designated by
37 the tax commission and to file returns with such banks, banking houses
38 or trust companies, as agent of the tax commission, in lieu of paying a
39 tax imposed by this chapter directly to the tax commission. However,
40 the tax commission shall designate only such banks, banking houses or
41 trust companies which are designated by the comptroller as depositories
42 of the state.

43 (c) Notwithstanding any other provisions of this chapter, the tax
44 commission may require:

45 (1) the filing of any or all of the following:

46 (A) a combined return which, in addition to the return provided for in
47 section 11-1751 of this chapter, may also include any or both of the
48 returns required to be filed by a resident individual of New York state
49 pursuant to the provisions of section six hundred fifty-one of the tax
50 law and which may be required to be filed by such individual pursuant to
51 chapter nineteen of this title and

52 (B) a combined employer's return which, in addition to the employer's
53 return provided for by this chapter, may also include any or both of the
54 employer's returns required to be filed by the same employer pursuant to
55 the provisions of section six hundred seventy-four of such law and

1 required to be filed by such employer pursuant to such chapter nineteen
2 of this title and

3 (2) where a combined return or employer's return is required, and with
4 respect to the payment of estimated tax, the tax commission may also
5 require the payment to it of a single amount which shall equal the total
6 of the amounts which would have been required to be paid with the
7 returns or employer's returns or in payment of estimated tax pursuant to
8 the provisions of article twenty-two of the tax law, and the provisions
9 of this chapter as if no combined return or employer's return were
10 required.

11 § 11-1802 Construction. This chapter shall be construed and enforced
12 in conformity with article thirty of the tax law, as added to such law
13 by chapter eight hundred eighty-one of the laws of nineteen hundred
14 seventy-five, pursuant to which article it is enacted.

15 CHAPTER 19
16 EARNINGS TAX ON NONRESIDENTS
17 SUBCHAPTER 1
18 GENERAL

19 § 11-1901 Meaning of terms. As used in this chapter, the following
20 terms shall mean and include:

21 (a) "Commissioner" means the commissioner of finance of the city
22 except that with respect to taxes imposed for any taxable year beginning
23 on or after January first, nineteen hundred seventy-six, such term shall
24 mean state tax commission.

25 (b) "Payroll period" and "employer" mean the same as payroll period
26 and employer as defined in subsections (b) and (d) of section thirty-
27 four hundred one of the internal revenue code, and "employee" shall also
28 include all those included as employees in subsection (c) of such
29 section of such code.

30 (c) "Commissioner of finance" means the commissioner of finance of the
31 city.

32 (d) "This state" means the state of New York.

33 (e) "Wages" means wages as defined in subsection (a) of section thir-
34 ty-four hundred one of the internal revenue code, except that (1) wages
35 shall not include payments for active service as a member of the armed
36 forces of the United States and shall not include, in the case of a
37 nonresident individual or partner of a partnership doing an insurance
38 business as a member of the New York insurance exchange described in
39 section six thousand two hundred one of the insurance law, any item of
40 income, gain, loss or deduction of such business which is such individ-
41 ual's distributive or pro rata share for federal income tax purposes or
42 which such individual is required to take into account separately for
43 federal income tax purposes, and (2) wages shall include (i) the amount
44 of member or employee contributions to a retirement system or pension
45 fund picked up by the employer pursuant to subdivision f of section five
46 hundred seventeen or subdivision d of section six hundred thirteen of
47 the retirement and social security law or section 13-225.1, 13-327.1,
48 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code of the
49 preceding municipality or subdivision nineteen of section twenty-five
50 hundred seventy-five of the education law, (ii) the amount deducted or
51 deferred from an employee's salary under a flexible benefits program
52 established pursuant to section twenty-three of the general municipal
53 law or section twelve hundred ten-a of the public authorities law, (iii)
54 the amount by which an employee's salary is reduced pursuant to the

1 provisions of subdivision b of section 12-126.1 and subdivision b of
2 section 12-126.2 of title twelve of the code of the preceding munici-
3 pality, and (iv) the amount of member or employee contributions to a
4 retirement system or pension fund picked up or paid by the employer for
5 members of the Manhattan and Bronx surface transportation authority
6 pension plan and treated as employer contributions in determining income
7 tax treatment under subdivision (h) of section four hundred fourteen of
8 the Internal Revenue Code.

9 (f) "Net earnings from self-employment" means the same as net earnings
10 from self-employment as defined in subsection (a) of section fourteen
11 hundred two of the internal revenue code, except that the deduction for
12 wages and salaries paid or incurred for the taxable year which is not
13 allowed pursuant to section two hundred eighty-c of such code shall be
14 allowed, and except that an estate or trust shall be deemed to have net
15 earnings from self-employment determined in the same manner as if it
16 were an individual subject to the tax on self-employment income imposed
17 by section fourteen hundred one of the internal revenue code diminished
18 by: (1) the amount of any deduction allowed by subsection (c) of
19 section six hundred forty-two of the internal revenue code and (2) the
20 deductions allowed by sections six hundred fifty-one and six hundred
21 sixty-one of such code to the extent that they represent distributions
22 or payments to a resident of the city. However, "trade or business" as
23 used in subsection (a) of section fourteen hundred two of such code
24 shall mean the same as trade or business as defined in subsection (c) of
25 section fourteen hundred two of such code, except that paragraphs four,
26 five and six of such subsection shall not apply in determining net earn-
27 ings from self-employment taxable under this chapter. Provided, however,
28 in the case of a nonresident individual or partner of a partnership
29 doing an insurance business described in section six thousand two
30 hundred one of the insurance law, any item of income, gain, loss or
31 deduction of such business which is the individual's distributive or pro
32 rata share for federal income tax purposes or which the individual is
33 required to take into account separately for federal income tax purposes
34 shall not be considered to be "net earnings from self-employment".

35 (g) "Taxable year" means the taxpayer's taxable year for federal
36 income tax purposes.

37 (h) Resident individual. A resident individual means an individual:

38 (1) who is domiciled in the city, unless (A) he or she maintains no
39 permanent place of abode in the city, maintains a permanent place of
40 abode elsewhere, and spends in the aggregate not more than thirty days
41 of the taxable year in the city, or (B) (i) within any period of five
42 hundred forty-eight consecutive days he or she is present in a foreign
43 country or countries for at least four hundred fifty days, and (ii)
44 during such period of five hundred forty-eight consecutive days he or
45 she is not present in the city for more than ninety days and does not
46 maintain a permanent place of abode in the city at which his or her
47 spouse, unless such spouse is legally separated, or minor children are
48 present for more than ninety days, and (iii) during any period of less
49 than twelve months which would be treated as a separate taxable period
50 pursuant to section 11-1919 of this chapter, and which period is
51 contained within such period of five hundred forty-eight consecutive
52 days, he or she is present in the city for a number of days which does
53 not exceed an amount which bears the same ratio to ninety as the number
54 of days contained in such period of less than twelve months bears to
55 five hundred forty-eight, or

1 (2) who is not domiciled in the city but maintains a permanent place
2 of abode in the city and spends in the aggregate more than one hundred
3 eighty-three days of the taxable year in the city, unless such individ-
4 ual is in active service in the armed forces of the United States.

5 (i) Nonresident individual. A nonresident individual means an individ-
6 ual who is not a resident.

7 (j) Resident estate or trust. A resident estate or trust means:

8 (1) the estate of a decedent who at his or her death was domiciled in
9 the city,

10 (2) a trust, or a portion of a trust, consisting of property trans-
11 ferred by will of a decedent who at his or her death was domiciled in
12 the city, or

13 (3) a trust, or portion of a trust, consisting of the property of:

14 (A) a person domiciled in the city at the time such property was
15 transferred to the trust, if such trust or portion of a trust was then
16 irrevocable, or if it was then revocable and has not subsequently become
17 irrevocable; or

18 (B) a person domiciled in the city at the time such trust, or portion
19 of a trust, became irrevocable, if it was revocable when such property
20 was transferred to the trust but has subsequently become irrevocable.

21 For the purposes of this subdivision, a trust or portion of a trust is
22 revocable if it is subject to a power, exercisable immediately or at any
23 future time, to revest title in the person whose property constitutes
24 such trust or portion of a trust, and a trust or portion of a trust
25 becomes irrevocable when the possibility that such power may be exer-
26 cised has been terminated.

27 (k) Nonresident estate or trust. A nonresident estate or trust means
28 an estate or trust which is not a resident.

29 (l) Unless a different meaning is clearly required, any terms used in
30 this chapter shall have the same meaning as when used in a comparable
31 context in the laws of the United States relating to federal taxes but
32 such meaning shall be subject to the exceptions or modifications
33 prescribed in or pursuant to article two-E of the general city law or by
34 the laws of this state. Any reference in this chapter to the internal
35 revenue code, the internal revenue code of nineteen hundred eighty-six
36 or to the laws of the United States shall mean the provisions of the
37 internal revenue code of nineteen hundred eighty-six, unless a reference
38 to the internal revenue code of nineteen hundred fifty-four is clearly
39 intended, and amendments thereto, and other provisions of the laws of
40 the United States relating to federal taxes, as the same are included in
41 the appendix and supplement to the appendix to this chapter. The quota-
42 tion of such laws of the United States is intended to make them a part
43 of this chapter and to avoid constitutional uncertainties which might
44 result if such laws were merely incorporated by reference. The quota-
45 tion of a provision of the federal internal revenue code or of any other
46 law of the United States shall not necessarily mean that it is applica-
47 ble to or has relevance to this chapter.

48 (m) With respect to any taxable year beginning in nineteen hundred
49 seventy, until and including the thirty-first day of December, nineteen
50 hundred seventy-one, "administrator" shall be read as "state tax commis-
51 sion"; "administrative agencies of the city" shall be read as "adminis-
52 trative agencies of the state"; "depositories or financial agents of the
53 city" shall be read as "depositories or financial agents of the state";
54 "officers or employees of the department of finance of the city" shall
55 be read as "officers or employees of the state department of taxation
56 and finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 of this

1 chapter "city" shall be read as "state"; "corporation counsel or other
2 appropriate officer of the city" or "corporation counsel of the city"
3 shall be read as "state attorney general"; and the words "it" or "its"
4 shall apply instead of the pronouns used where the reference is to tax
5 commission. Provided, however, with respect to declarations of estimated
6 tax and payments of such tax and the withholding tax requirements, until
7 and including the thirty-first day of December, nineteen hundred seven-
8 ty-one, any such terms shall be so read with respect to any taxable year
9 or other period beginning in nineteen hundred seventy-one.

10 (n) The term "partnership" shall include, unless a different meaning
11 is clearly required, a subchapter K limited liability company. The term
12 "subchapter K limited liability company" shall mean a limited liability
13 company classified as a partnership for federal income tax purposes. The
14 term "limited liability company" means a domestic limited liability
15 company or a foreign limited liability company, as defined in section
16 one hundred two of the limited liability company law, a limited liabil-
17 ity investment company formed pursuant to section five hundred seven of
18 the banking law, or a limited liability trust company formed pursuant to
19 section one hundred two-a of the banking law.

20 § 11-1902 Persons subject to tax. (a) Imposition of tax. (1) A tax is
21 hereby imposed for each taxable year ending on or after July first,
22 nineteen hundred sixty-six and on or before December thirty-first, nine-
23 teen hundred seventy and for each taxable year beginning after December
24 thirty-first, nineteen hundred ninety-nine, on the wages earned and net
25 earnings from self-employment, within the city, of every nonresident
26 individual, estate and trust which shall comprise: (i) A tax at the
27 rate of one-fourth of one percent on all wages.

28 (ii) A tax at the rate of three-eighths of one percent on all net
29 earnings from self-employment.

30 (2) For each taxable year beginning on or after January first, nine-
31 teen hundred seventy-one and ending on or before December thirty-first,
32 nineteen hundred ninety-nine, a tax is hereby imposed on the wages
33 earned, and net earnings from self-employment, within the city, of every
34 nonresident individual, estate and trust which shall comprise: (i) A
35 tax at the rate of forty-five hundredths of one percent on all wages.

36 (ii) A tax at the rate of sixty-five hundredths of one percent on all
37 net earnings from self-employment.

38 (3) For each taxable year beginning in nineteen hundred seventy and
39 ending in nineteen hundred seventy-one, two tentative taxes shall be
40 computed, the first as provided in paragraph one of this subdivision and
41 the second as provided in paragraph two of this subdivision, and the tax
42 for each such year shall be the sum of that proportion of each tentative
43 tax which the number of days in nineteen hundred seventy and the number
44 of days in nineteen hundred seventy-one, respectively, bears to the
45 number of days in the entire taxable year.

46 (4) For each taxable year beginning in nineteen hundred ninety-nine
47 and ending in two thousand, two tentative taxes shall be computed, the
48 first as provided in paragraph two of this subdivision and the second as
49 provided in paragraph one of this subdivision, and the tax for each such
50 year shall be the sum of that proportion of each tentative tax which the
51 number of days in nineteen hundred ninety-nine and the number of days in
52 two thousand, respectively, bears to the number of days in the entire
53 taxable year.

54 (b) Exclusion. (1) In computing the amount of wages and net earnings
55 from self-employment taxable under subdivision (a) of this section,

1 there shall be allowed an exclusion against the total of wages and net
2 earnings from self-employment in accordance with the following table:

3 Total of wages and net earnings	
4 from self-employment	Exclusion allowable
5 Not over \$10,000	\$3,000
6 Over \$10,000 but not over \$20,000	\$2,000
7 Over \$20,000 but not over \$30,000	\$1,000
8 Over \$30,000	None

9 (2) The exclusion allowable shall be applied pro rata against wages
10 and net earnings from self-employment.

11 (3) For taxable periods of less than one year, the exclusion allowable
12 shall be prorated pursuant to regulations of the commissioner.

13 (c) Limitation. In no event shall a taxpayer be subject to the tax
14 under this chapter in an amount greater than such taxpayer would be
15 required to pay if such taxpayer were a resident of the city and subject
16 to a tax on personal income of residents of the city adopted by the city
17 pursuant to authority granted by the general city law or the tax law.

18 § 11-1903 Taxable years to which tax imposed by this chapter applies;
19 tax for taxable years beginning prior to and ending after July first,
20 nineteen hundred sixty-six. (a) General. The tax imposed by this chapter
21 is imposed for each taxable year beginning with taxable years ending on
22 or after July first, nineteen hundred sixty-six.

23 (b) Alternate methods for determining tax for taxable years ending on
24 or after July first, nineteen hundred sixty-six. (1) The tax for any
25 taxable year ending on or after July first, nineteen hundred sixty-six
26 and on or before June thirtieth, nineteen hundred sixty-seven, shall be
27 the same part of the tax which would have been imposed had this chapter
28 been in effect for the entire taxable year as the number of months, or
29 major portions thereof, of the taxable year occurring after July first,
30 nineteen hundred sixty-six is of the number of months, or major portions
31 thereof, in the taxable year.

32 (2)(i) In lieu of the method of computation of tax prescribed in para-
33 graph one of this subdivision, if the taxpayer maintains adequate
34 records for any taxable year ending on or after July first, nineteen
35 hundred sixty-six and on or before June thirtieth, nineteen hundred
36 sixty-seven, the tax for such taxable year, at the election of the
37 taxpayer, may be computed on the basis of the wages which the taxpayer
38 would have reported had he or she filed a federal income tax return for
39 a taxable year beginning July first, nineteen hundred sixty-six, and
40 ending with the close of such taxable year ending on or before June
41 thirtieth, nineteen hundred sixty-seven, and the net earnings from self-
42 employment which the taxpayer would have reported for federal income tax
43 purposes had he or she filed a self-employment tax return for a taxable
44 year beginning July first, nineteen hundred sixty-six and ending with
45 the close of such taxable year ending on or before June thirtieth, nine-
46 teen hundred sixty-seven.

47 (ii) For purposes of this paragraph, the exclusions allowable under
48 section 11-1902 of this subchapter shall be reduced by a fraction, the
49 numerator of which is the number of months, or major portions thereof,
50 of the taxable year occurring before July first, nineteen hundred
51 sixty-six, and the denominator of which is the number of months, or
52 major portions thereof, in the taxable year. Except as provided in this
53 paragraph, the tax for such period ending on or before June thirtieth,

1 nineteen hundred sixty-seven, shall be computed in accordance with the
2 other provisions of this chapter.

3 § 11-1904 Allocation to the city. (a) General. If net earnings from
4 self-employment are derived from services performed, or from sources,
5 within and without the city, there shall be allocated to the city a fair
6 and equitable portion of such earnings.

7 (b) Allocation of net earnings from self-employment.

8 (1) Place of business. If a taxpayer has no regular place of business
9 outside the city all of his or her net earnings from self-employment
10 shall be allocated to the city.

11 (2) Allocation by taxpayer's books. The portion of net earnings from
12 self-employment allocable to the city may be determined from the books
13 and records of a taxpayer's trade or business, if the methods used in
14 keeping such books and the accuracy thereof are approved by the commis-
15 sioner as fairly and equitably reflecting net earnings from self-employ-
16 ment within the city.

17 (3) Allocation by formula. If paragraph two of this subdivision does
18 not apply to the taxpayer, the portion of net earnings from self-employ-
19 ment allocable to the city shall be determined by multiplying (A) net
20 earnings from self-employment within and without the city, by (B) the
21 average of the following three percentages:

22 (i) Property percentage. The percentage computed by dividing (A) the
23 average of the value, at the beginning and end of the taxable year, of
24 real and tangible personal property connected with net earnings from
25 self-employment and located within the city, by (B) the average of the
26 value, at the beginning and end of the taxable year, of all real and
27 tangible personal property connected with the net earnings from self-em-
28 ployment and located both within and without the city. For this
29 purpose, real property shall include real property whether owned or
30 rented.

31 (ii) Payroll percentage. The percentage computed by dividing (A) the
32 total wages, salaries and other personal service compensation paid or
33 incurred during the taxable year to employees in connection with the net
34 earnings from self-employment derived from a trade or business carried
35 on within the city, by (B) the total of all wages, salaries and other
36 personal service compensation paid or incurred during the taxable year
37 to employees in connection with the net earnings from self-employment
38 derived from a trade or business carried on both within and without the
39 city.

40 (iii) Gross income percentage. The percentage computed by dividing
41 (A) the gross sales or charges for services performed by or through an
42 agency located within the city, by (B) the total of all gross sales or
43 charges for services performed within and without the city. The sales
44 or charges to be allocated to the city shall include all sales negoti-
45 ated or consummated, and charges for services performed, by an employee,
46 agent, agency or independent contractor chiefly situated at, connected
47 by contract or otherwise with, or sent out from, offices or other agen-
48 cies of the trade or business from which a taxpayer is deriving net
49 earnings from self-employment, situated within the city.

50 (c) Other allocation methods. The portion of net earnings from self-
51 employment allocable to the city shall be determined in accordance with
52 rules and regulations of the commissioner if it shall appear to the
53 commissioner that the net earnings from self-employment are not fairly
54 and equitably reflected under the provisions of subdivision (b) of this
55 section.

1 (d) Special rules for real estate. Income and deductions from the
2 rental of real property and gain and loss from the sale, exchange or
3 other disposition of real property, shall not be subject to allocation
4 under subdivision (b) or (c) of this section, but shall be considered as
5 entirely derived from or connected with the place in which such property
6 is located.

7 § 11-1905 Accounting periods and methods. (a) Accounting periods. A
8 taxpayer's taxable year under this chapter shall be the same as his or
9 her taxable year for federal income tax purposes.

10 (b) Change of accounting periods. If a taxpayer's taxable year is
11 changed for federal income tax purposes, his or her taxable year for
12 purposes of this chapter shall be similarly changed. If a taxable peri-
13 od of less than twelve months results from a change of taxable year, the
14 exclusion allowable under section 11-1902 of this subchapter shall be
15 prorated under regulations of the commissioner.

16 (c) Accounting methods. A taxpayer's method of accounting under this
17 chapter shall be the same as his or her method of accounting for federal
18 income tax purposes. In the absence of any method of accounting for
19 federal income tax purposes, net earnings from self-employment within
20 the city shall be computed under such method as in the opinion of the
21 commissioner clearly reflects net earnings from self-employment within
22 the city.

23 (d) Change of accounting methods. (1) If a taxpayer's method of
24 accounting is changed for federal income tax purposes, his or her method
25 of accounting for purposes of this chapter shall be similarly changed.

26 (2) If a taxpayer's method of accounting is changed, other than from
27 an accrual to an installment method, any additional tax which results
28 from adjustments determined to be necessary solely by reason of the
29 change shall not be greater than if such adjustments were ratably allo-
30 cated and included for the taxable year of the change and the preceding
31 taxable years, beginning after July first, nineteen hundred sixty-six,
32 not in excess of two, during which the taxpayer used the method of
33 accounting from which the change is made.

34 (3) If a taxpayer's method of accounting is changed from an accrual to
35 an installment method, any additional tax for the year of such change of
36 method and for any subsequent year which is attributable to the receipt
37 of installment payments properly accrued in a prior year, shall be
38 reduced by the portion of tax for any prior taxable year attributable to
39 the accrual of such installment payments, in accordance with regulations
40 of the commissioner.

41 § 11-1908 Withholding of tax on wages. On or after the first payroll
42 period beginning August twenty-seventh, nineteen hundred sixty-six,
43 every employer maintaining an office or transacting business within this
44 state and making payment of any wages taxable under this chapter shall
45 deduct and withhold from such wages for each payroll period a tax
46 computed in such manner as to result, so far as practicable, in with-
47 holding from the employee's wages during each calendar year an amount
48 substantially equivalent to the tax reasonably estimated to be due from
49 the employee under this chapter. The method of determining the amount to
50 be withheld shall be prescribed by regulations of the commissioner.

51 § 11-1909 Withholding of tax on wages for taxable periods commencing
52 on or after January first, nineteen hundred seventy-six. The provisions
53 contained in sections 11-1908, 11-1910, 11-1911, 11-1912, 11-1913 and
54 11-1914 of this subchapter shall not be applicable to taxes imposed for
55 taxable periods commencing on or after January first, nineteen hundred
56 seventy-six provided however, with respect to such periods, the

1 provisions contained in part V of article twenty-two of the tax law
2 shall be applicable with the same force and effect as if those
3 provisions had been incorporated in full in this section except that the
4 term "aggregate amount" contained in paragraphs one, two and three of
5 subsection (a) of section six hundred seventy-four of the tax law shall
6 mean the aggregate amounts of New York state personal income tax, city
7 earnings tax on nonresidents and city personal income tax on residents
8 authorized pursuant to article thirty of the tax law required to be
9 deducted and withheld and provided, however, that the provisions of such
10 paragraphs shall not be applicable to employer's returns required to be
11 filed with respect to taxes required to be deducted and withheld during
12 the calendar year nineteen hundred seventy-six, but such returns shall
13 be required to be filed with the tax commission at the times and in the
14 manner provided for in subdivision (a) of section 11-1912 of this
15 subchapter, except the term "commission" in such subdivision shall be
16 read as "tax commission." This section shall not apply to payments by
17 the United States for service in the armed forces of the United States
18 so long as the right to require deduction and withholding of tax from
19 such payments is prohibited by the laws of the United States. Service in
20 the armed forces of the United States shall have the same meaning as
21 when used in a comparable context in the laws of the United States
22 relating to withholding of city income taxes.

23 § 11-1910 Information statement for employee. Every employer required
24 to deduct and withhold tax under this chapter from the wages of an
25 employee, shall furnish to each such employee in respect of the wages
26 paid by such employer to such employee during the calendar year on or
27 before February fifteenth of the succeeding year, or, if his or her
28 employment is terminated before the close of such calendar year, within
29 thirty days from the date on which the last payment of the wages is
30 made, a written statement as prescribed by the commissioner showing the
31 total amount of wages paid by the employer to the employee, the amount
32 of wages paid for services performed within the city, the amount
33 deducted and withheld as tax, and such other information as the commis-
34 sioner may prescribe. The written statement required under this
35 section may be furnished to such employee in an electronic format.

36 § 11-1911 Credit for tax withheld. Wages upon which tax is required to
37 be withheld shall be taxable under this chapter as if no withholding
38 were required, but any amount of tax actually deducted and withheld
39 under this chapter in any calendar year shall be deemed to have been
40 paid on behalf of the employee from whom withheld, and such employee
41 shall be credited with having paid that amount of tax in such calendar
42 year. For a taxable year of less than twelve months, the credit shall be
43 made under regulations of the commissioner.

44 § 11-1912 Employer's return and payment of withheld taxes. (a) Gener-
45 al. On or after the first payroll period beginning August twenty-sev-
46 enth, nineteen hundred sixty-six, every employer required to deduct and
47 withhold tax under this chapter shall, for each calendar month, on or
48 before the fifteenth day of the month following the close of such calen-
49 dar month file a withholding return as prescribed by the commissioner
50 and pay over to the commissioner or to the depository designated by the
51 commissioner, the taxes so required to be deducted and withheld, except
52 that for the month of December in any year the returns shall be filed
53 and the taxes paid on or before January thirty-first of the succeeding
54 year. Where the aggregate amount required to be deducted and withheld
55 by any employer under this chapter and under chapter seventeen of this
56 title is less than twenty-five dollars in a calendar month and the

1 aggregate of such taxes for the semi-annual period ending on June thir-
2 tieth and December thirty-first can reasonably be expected to be less
3 than one hundred fifty dollars, the commissioner may, by regulation,
4 permit an employer to file a return on or before July thirty-first for
5 the semi-annual period ending on June thirtieth and on or before January
6 thirty-first for the semi-annual period ending on December thirty-first.
7 The commissioner may, if he or she believes such action necessary for
8 the protection of the revenues, require any employer to make a return
9 and pay to him or her the tax deducted and withheld at any time, or from
10 time to time. Where the amount of wages paid by an employer is not
11 sufficient under this chapter and under chapter seventeen of this title
12 to require the withholding of tax from the wages of any of his or her
13 employees, the commissioner may, by regulation, permit such employer to
14 file an annual return on or before February twenty-eighth of the follow-
15 ing calendar year.

16 (b) Combined returns. The commissioner may by regulation provide for
17 the filing of one return which shall include the return required to be
18 filed under this section, together with the employer's return required
19 to be filed under chapter seventeen of this title.

20 (c) Deposit in trust for city. Whenever any employer fails to collect,
21 truthfully account for, pay over the tax, or make returns of the tax as
22 required in this section, the commissioner may serve a notice requiring
23 such employer to collect the taxes which become collectible after
24 service of such notice, to deposit such taxes in a bank approved by the
25 commissioner, in a separate account, in trust for the city and payable
26 to the commissioner, and to keep the amount of such tax in such account
27 until payment over to the commissioner. Such notice shall remain in
28 effect until a notice of cancellation is served by the commissioner.

29 § 11-1913 Employer's liability for withheld taxes. Every employer
30 required to deduct and withhold the tax under this chapter is hereby
31 made liable for such tax. For purposes of assessment and collection,
32 any amount required to be withheld and paid over to the commissioner,
33 and any additions to tax, penalties and interest with respect thereto
34 shall be considered the tax of the employer. Any amount of tax actually
35 deducted and withheld under this chapter shall be held to be a special
36 fund in trust for the city. No employee shall have any right of action
37 against his or her employer in respect to any monies deducted and with-
38 held from his or her wages and paid over to the commissioner in compli-
39 ance or in intended compliance with this chapter.

40 § 11-1914 Employer's failure to withhold. If an employer fails to
41 deduct and withhold the tax, as required, and thereafter the tax against
42 which such tax may be credited is paid, the tax so required to be
43 deducted and withheld shall not be collected from the employer, but the
44 employer shall not be relieved from liability for any penalties, inter-
45 est or additions to the tax otherwise applicable in respect of such
46 failure to deduct and withhold.

47 § 11-1915 Combined returns, employer's returns and payments. The
48 state tax commission may require:

49 (1) The filing of any or all of the following:

50 (A) A combined return which in addition to the return provided for in
51 this chapter may also include returns required to be filed under a law
52 authorized by article thirty of the tax law and under article twenty-two
53 of the tax law.

54 (B) A combined employer's return which in addition to the employer's
55 return provided for by this chapter may also include employer's returns

1 required to be filed under a law authorized by article thirty of the tax
2 law and under article twenty-two of the tax law.

3 (2) Where a combined return or employer's return is required, and
4 with respect to the payment of estimated tax, the state tax commission
5 may also require payment of a single amount which shall be the total of
6 the amounts, total taxes less any credits or refunds, required to be
7 paid with the returns or employer's returns or in payment of estimated
8 tax pursuant to the provisions of this chapter, a law authorized by
9 article thirty of the tax law and pursuant to the provisions of article
10 twenty-two of the tax law.

11 SUBCHAPTER 2

12 RETURNS AND PAYMENT OF TAX

13 § 11-1916 Returns and payment of tax. (a) General. On or before the
14 fifteenth day of the fourth month following the close of the taxable
15 year, every person subject to the tax shall make and file a return and
16 any balance of the tax shown due on the face of such return shall be
17 paid therewith. The commissioner may, by regulation, provide for the
18 filing of returns and payment of the tax at such other times as he or
19 she deems necessary for the proper enforcement of this chapter. The
20 commissioner may also provide by regulation that any return otherwise
21 required to be made and filed under this chapter by any nonresident
22 individual need not be made and filed if such nonresident individual
23 had, during the taxable year to which the return would relate, no net
24 earnings from self-employment within the city. Any regulation allowing
25 such waiver of return may provide for additional limitations on and
26 conditions and prerequisites to the privilege of not filing a return.

27 (b) Decedents. The return for any deceased individual shall be made
28 and filed by his or her executor, administrator, or other person charged
29 with his or her property. If a final return of a decedent is for a
30 fractional part of a year, the due date of such return shall be the
31 fifteenth day of the fourth month following the close of the twelve-
32 month period which began with the first day of such fractional part of
33 the year.

34 (c) Individuals under a disability. The return for an individual who
35 is unable to make a return by reason of minority or other disability
36 shall be made and filed by his or her guardian, committee, fiduciary or
37 other person charged with the care of his or her person or property,
38 other than a receiver in possession of only a part of his or her proper-
39 ty, or by his or her duly authorized agent.

40 (d) Estates and trust. The return for an estate or trust shall be made
41 and filed by the fiduciary.

42 (e) Joint fiduciaries. If two or more fiduciaries are acting jointly,
43 the return may be made by any one of them.

44 (f) Cross reference. For provisions as to information returns by part-
45 nerships, employers and other persons, see section 11-1921 of this
46 subchapter.

47 § 11-1917 Time and place for filing returns and paying tax. A person
48 required to make and file a return under this chapter shall, without
49 assessment, notice or demand, pay any tax due thereon to the commis-
50 sioner on or before the date fixed for filing such return, determined with-
51 out regard to any extension of time for filing the return. The commis-
52 sioner shall prescribe by regulation the place for filing any return,
53 statement, or other document required pursuant to this chapter and for
54 payment of any tax.

1 § 11-1918 Signing of returns and other documents. (a) General. Any
2 return, statement or other document required to be made pursuant to this
3 chapter shall be signed in accordance with regulations or instructions
4 prescribed by the commissioner. The fact that an individual's name is
5 signed to a return, statement, or other document, shall be prima facie
6 evidence for all purposes that the return, statement or other document
7 was actually signed by such individual.

8 (b) Partnerships. Any return, statement or other document required of
9 a partnership shall be signed by one or more partners. The fact that a
10 partner's name is signed to a return, statement, or other document,
11 shall be prima facie evidence for all purposes that such partner is
12 authorized to sign on behalf of the partnership.

13 (c) Certifications. The making or filing of any return, statement or
14 other document or copy thereof required to be made or filed pursuant to
15 this chapter, including a copy of a federal return, shall constitute a
16 certification by the person making or filing such return, statement or
17 other document or copy thereof that the statements contained therein are
18 true and that any copy filed is a true copy.

19 § 11-1919 Change of residence status during year. (a) General. If an
20 individual changes his or her status during his or her taxable year from
21 resident to nonresident, or from nonresident to resident, he or she
22 shall file a return as a nonresident for the portion of the year during
23 which he or she is a nonresident if he or she is subject to the tax
24 imposed by this chapter or, if not subject to such tax, an information
25 return for the portion of the year during which he or she is a nonresi-
26 dent, subject to such exceptions as the commissioner may prescribe by
27 regulation. Such information return shall be due at the same time as
28 the return required by chapter seventeen of this title for the portion
29 of the year during which such individual is a resident.

30 (b) City taxable wages and net earnings from self-employment for
31 portion of year individual is a nonresident. The city taxable wages and
32 net earnings from self-employment for the portion of the year during
33 which he or she is a nonresident shall be determined, except as provided
34 in subdivision (c) of this section, under this chapter as if his or her
35 taxable year for federal income tax purposes were limited to the period
36 of his or her nonresident status.

37 (c) Special accruals. (1) If an individual changes his or her status
38 from resident to nonresident, he or she shall, regardless of his or her
39 method of accounting, accrue for the portion of the taxable year prior
40 to such change of status any items of income, gain, loss or deduction
41 accruing prior to the change of status, if not otherwise properly inclu-
42 dible, whether or not because of an election to report on an installment
43 basis, or allowable for city earnings tax purposes for such portion of
44 the taxable year for a prior taxable year. The amounts of such accrued
45 items shall be determined as if such accrued items were includible or
46 allowable for federal self-employment tax purposes.

47 (2) If an individual changes his or her status from nonresident to
48 resident, he or she shall, regardless of his or her method of account-
49 ing, accrue for the portion of the taxable year prior to such change of
50 status any items of income, gain, loss or deduction accruing prior to
51 the change of status, if not otherwise properly includible, whether or
52 not because of an election to report on an installment basis, or allow-
53 able for federal self-employment tax purposes for such portion of the
54 taxable year or for prior taxable year. The amounts of such accrued
55 items shall be determined if such accrued items were includible or
56 allowable for federal self-employment tax purposes.

1 (3) No item of income, gain, loss or deduction which is accrued under
2 this subdivision shall be taken into account in determining city
3 adjusted wages earned, or net earnings from self-employment, within the
4 city, for any subsequent taxable period.

5 (4) Where an individual changes his or her status from resident to
6 nonresident, the accruals under this subdivision shall not be required
7 if the individual files with the commissioner a bond or other security
8 acceptable to the commissioner, conditioned upon the inclusion of
9 amounts accruable under this subdivision in city adjusted gross income
10 under chapter seventeen of this title for one or more subsequent taxable
11 years as if the individual has not changed his or her resident status.
12 In such event, the tax under this chapter shall not apply to such
13 amounts.

14 (d) Prorations. Where an individual changes his or her status during
15 his or her taxable year from resident to nonresident or from nonresident
16 to resident, the exclusion allowable under subdivision (b) of section
17 11-1902 of this chapter shall be prorated, under regulations of the
18 commissioner, to reflect the portions of the entire taxable year during
19 which the individual was a resident and a nonresident.

20 § 11-1920 Extension of time. (a) General. The commissioner may grant a
21 reasonable extension of time for payment of tax or estimated tax, or any
22 installment, or for filing any return, statement, or other document
23 required pursuant to this chapter, on such terms and conditions as he or
24 she may require. Except for a taxpayer who is outside the United States
25 or who intends to claim nonresident status pursuant to subparagraphs
26 (i), (ii) and (iii) of paragraph one of subdivision (h) of section
27 11-1901 of this chapter, no such extension for filing any return, state-
28 ment or other document, shall exceed six months.

29 (b) Furnishing of security. If any extension of time is granted for
30 payment of any amount of tax, the commissioner may require the taxpayer
31 to furnish a bond or other security in an amount not exceeding twice the
32 amount for which the extension of time for payment is granted, on such
33 terms and conditions as the commissioner may require.

34 § 11-1921 Requirements concerning returns, notices, records and state-
35 ments. (a) General. The commissioner may prescribe regulations as to the
36 keeping of records, the content and form of returns and statements, and
37 the filing of copies of federal income tax returns and determinations.
38 The commissioner may require any person, by regulation or notice served
39 upon such person, to make such returns, render such statements, or keep
40 such records, as the commissioner may deem sufficient to show whether or
41 not such person is liable under this chapter for tax or for collection
42 of tax.

43 (b) Partnerships. Every partnership doing business in the city and
44 having no partners who are residents shall make a return for the taxable
45 year setting forth all items of income, gain, loss and deduction and
46 such other pertinent information as the commissioner may by regulations
47 and instructions prescribe. Such return shall be filed on or before the
48 fifteenth day of the fourth month following the close of each taxable
49 year. For purposes of this subdivision, "taxable year" means year or
50 period which would be a taxable year of the partnership if it were
51 subject to tax under this chapter.

52 (c) Information at source. The commissioner may prescribe regulations
53 and instructions requiring returns of information to be made and filed
54 on or before February twenty-eighth of each year as to the payment or
55 crediting in any calendar year of amounts of six hundred dollars or more
56 to any taxpayer under this chapter. Such returns may be required of any

1 person, including lessees or mortgagors of real or personal property,
2 fiduciaries, employers, and all officers and employees of this state, or
3 any municipal corporation or political subdivision of this state, having
4 the control, receipt, custody, disposal or payment of interest, rents,
5 salaries, wages, premiums, annuities, compensations, remunerations,
6 emoluments or other fixed or determinable gains, profits or income,
7 except interest coupons payable to bearer. A duplicate of the statement
8 as to tax withheld on wages, required to be furnished by an employer to
9 an employee, shall constitute the return of information required to be
10 made under this section with respect to such wages.

11 (d) Notice of qualification as receiver, etc. Every receiver, trustee
12 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
13 ary shall give notice of his or her qualifications as such to the
14 commissioner, as may be required by regulation.

15 § 11-1922 Report of change in federal or New York state taxable
16 income. If the amount of a taxpayer's federal or New York state taxable
17 income or self-employment income reported on his or her federal or New
18 York state tax return for any taxable year is changed or corrected by
19 the United States internal revenue service or the New York state commis-
20 sioner of taxation and finance or other competent authority, or as the
21 result of a renegotiation of a contract or subcontract with the United
22 States or New York state or if a taxpayer, pursuant to subsection (d) of
23 section six thousand two hundred thirteen of the internal revenue code,
24 executes a notice of waiver of the restrictions provided in subsection
25 (a) of said section or if a taxpayer, pursuant to subdivision (f) of
26 section six hundred eighty-one of the tax law executes a notice of waiv-
27 er of the restrictions provided in subdivision (c) of said section, or
28 if any tax on self-employment income in addition to that shown on his or
29 her return is assessed, the taxpayer shall report such change or
30 correction in federal or New York state taxable income or such execution
31 of such notice of waiver or such assessment and the changes or
32 corrections of his or her federal or New York state taxable income or
33 self-employment income on which it is based, within ninety days after
34 the final determination of such change, correction, or renegotiation, or
35 such execution of such notice of waiver or the making of such assessment
36 as otherwise required by the commissioner, and shall concede the accura-
37 cy of such determination or state wherein it is erroneous. Any taxpayer
38 filing an amended federal or New York state income or self-employment
39 income tax return shall also file within ninety days thereafter an
40 amended return under this chapter, and shall give such information as
41 the commissioner may require. The commissioner may by regulation
42 prescribe such exceptions to the requirements of this section as he or
43 she deems appropriate. For purposes of this section, (i) the term
44 "taxpayer" shall include a partnership having any income derived from
45 city sources, and (ii) the term "federal income tax return" shall
46 include the returns of income required under section six thousand thir-
47 ty-one of the internal revenue code. Reports made under this section by
48 a partnership shall indicate the portion of the change in each item of
49 income, gain, loss or deduction allocable to each partner and shall set
50 forth such identifying information with respect to such partner as may
51 be prescribed by the commissioner.

52
53

SUBCHAPTER 3
PROCEDURE AND ADMINISTRATION

1 § 11-1923 Notice of deficiency. (a) General. If upon examination of a
2 taxpayer's return under this chapter the commissioner determines that
3 there is a deficiency of tax, he or she may mail a notice of deficiency
4 to the taxpayer. If a taxpayer fails to file a return required under
5 this chapter, the commissioner is authorized to estimate the taxpayer's
6 wages and net earnings from self-employment or the wages from which
7 taxes are required to be deducted and withheld and the tax thereon, from
8 any information in the commissioner's possession, and to mail a notice
9 of deficiency to the taxpayer. A notice of deficiency shall be mailed
10 by certified or registered mail to the taxpayer at such taxpayer's last
11 known address in or out of the city. If the taxpayer is deceased or
12 under a legal disability, a notice of deficiency may be mailed to his or
13 her last known address in or out of the city, unless the commissioner
14 has received notice of the existence of a fiduciary relationship with
15 respect to the taxpayer.

16 (b) Notice of deficiency as assessment. The notice of deficiency shall
17 be an assessment of the amount of tax specified in such notice, together
18 with the interest, additions to tax and penalties stated in such notice.

19 (c) Restrictions on collection and levy. No notice and demand for
20 payment of an assessment of a deficiency in tax made by a notice of
21 deficiency and no levy or proceeding in court for its collection shall
22 be made, begun or prosecuted, except as otherwise provided in section
23 11-1937 of this subchapter, until the expiration of the time for filing
24 a petition contesting such notice, nor, if a petition with respect to
25 the taxable year has been filed with the commissioner, until the deci-
26 sion of the commissioner has become final. After a petition has been
27 filed the restriction provided herein shall not apply to such part of
28 the deficiency as is not contested by the petition. For exception in
29 the case of judicial review of the decision of the commissioner, see
30 subdivision (c) of section 11-1932 of this subchapter.

31 (d) Exceptions for mathematical errors. If a mathematical error
32 appears on a return, including an overstatement of the credit for tax
33 withheld at the source or of the amount paid as estimated tax, the
34 commissioner shall notify the taxpayer that an amount of tax in excess
35 of that shown upon the return is due, and that such excess has been
36 assessed. Such notice shall not be considered as a notice of deficiency
37 for the purposes of this section, subdivision (f) of section 11-1929 of
38 this subchapter, limiting credits or refunds after petition to the
39 commissioner, or subdivision (b) of section 11-1931 of this subchapter,
40 authorizing the filing of a petition with the commissioner based on a
41 notice of deficiency, nor shall collection of such assessment be prohib-
42 ited by the provisions of subdivision (c) of this section.

43 (e) Exception where change in federal or New York state taxable income
44 is not reported (1) If the taxpayer fails to comply with section 11-1922
45 of this chapter in not reporting a change or correction increasing his
46 or her federal or New York state taxable income or self-employment
47 income as reported on such taxpayer's federal or New York state tax
48 return or in not reporting a change or correction which is treated in
49 the same manner as if it were a deficiency for federal or New York state
50 tax purposes or in not filing an amended return or in not reporting the
51 execution of a notice of waiver or an assessment described in such
52 section, instead of the mode and time of assessment and collection
53 provided for in subdivision (b) of this section, the commissioner may
54 assess a deficiency based upon such changed or corrected federal or New
55 York state taxable income or self-employment income by mailing to the
56 taxpayer a notice of additional tax due specifying the amount of the

1 deficiency, and such deficiency, together with the interest, additions
2 to tax and penalties stated in such notice, shall be deemed assessed and
3 subject to collection procedures on the date such notice is mailed
4 unless within thirty days after the mailing of such notice a report of
5 the federal or New York state change or correction or an amended return,
6 where such return was required by section 11-1922 of this chapter is
7 filed accompanied by a statement showing wherein such federal or New
8 York state determination of such notice of additional tax due are erro-
9 neous.

10 (2) Such notice shall not be considered as a notice of deficiency for
11 the purposes of this section, subdivision (f) of section 11-1929 of this
12 subchapter, limiting credits or refunds after petition to the commis-
13 sioner, or subdivision (b) of section 11-1931 of this subchapter,
14 authorizing the filing of a petition with the commissioner based on a
15 notice of deficiency, nor shall the collection of such assessment be
16 prohibited by the provisions of subdivision (c) of this section.

17 If the taxpayer is deceased or under a legal disability, a notice of
18 additional tax due may be mailed to his or her last known address in or
19 out of the city, unless the commissioner has received notice of the
20 existence of a fiduciary relationship with respect to the taxpayer.

21 (f) Waiver of restrictions. The taxpayer shall at any time have the
22 right to waive the mailing of a notice of deficiency or restriction on
23 collection of the whole or any part of the deficiency, or both, by a
24 signed notice in writing filed with the commissioner.

25 (g) Deficiency defined. For purposes of this chapter, a deficiency
26 means the amount of the tax imposed by this chapter, less (1) the amount
27 shown as the tax upon the taxpayer's return, whether the return was made
28 or the tax computed by the taxpayer or by the commissioner, and less,
29 (2) the amounts previously assessed, or collected without assessment, as
30 a deficiency and plus (3) the amount of any rebates. For the purpose of
31 this definition, the tax imposed by this chapter and the tax shown on
32 the return shall both be determined without regard to payments on
33 account of estimated tax or the credit for withholding tax; and a rebate
34 means so much of an abatement, refund or other repayment, whether or not
35 erroneous, made on the ground that the amounts entering into the defi-
36 nition of a deficiency showed a balance in favor of the taxpayer.

37 § 11-1924 Assessment. (a) Assessment date. The amount of tax which a
38 return shows to be due, or the amount of tax which a return would have
39 shown to be due but for a mathematical error, shall be deemed to be
40 assessed on the date of filing of the return, including any amended
41 return showing an increase of tax. In the case of a return properly
42 filed without computation of tax, the tax computed by the commissioner
43 shall be deemed to be assessed on the date on which payment is due. If
44 a notice of deficiency has been mailed, the amount of the deficiency
45 shall be deemed to be assessed on the date on which it is mailed. If an
46 amended return or report filed pursuant to section 11-1922 of this chap-
47 ter concedes the accuracy of a federal or New York state adjustment,
48 change or correction, any deficiency in tax under this chapter resulting
49 therefrom shall be deemed to be assessed on the date of filing such
50 report or amended return, and such assessment shall be timely notwith-
51 standing section 11-1925 of this subchapter. If a notice of additional
52 tax due, as prescribed in subdivision (e) of section 11-1923 of this
53 subchapter, has been mailed, the amount of the deficiency shall be
54 deemed to be assessed on the date specified in such subdivision unless
55 within thirty days after the mailing of such notice a report of the
56 federal or New York state change or correction or an amended return,

1 where such return was required by section 11-1922 of this chapter, is
2 filed accompanied by a statement showing wherein such federal or New
3 York state determination and such notice of additional tax due are erro-
4 neous. Any amount paid as a tax or in respect of a tax, other than
5 amounts withheld at the source or paid as estimated income tax, shall be
6 deemed to be assessed upon the date of receipt of payment, notwithstand-
7 ing any other provisions.

8 (b) Other assessment powers. If the mode or time for the assessment
9 of any tax under this chapter, including interest, additions to tax and
10 assessable penalties, is not otherwise provided for, the commissioner
11 may establish the same by regulations.

12 (d) Supplemental assessment. The commissioner may, at any time within
13 the period prescribed for assessment, make a supplemental assessment,
14 subject to the provisions of section 11-1923 of this subchapter where
15 applicable, whenever it is ascertained that any assessment is imperfect
16 or incomplete in any material respect.

17 (e) Cross reference. For assessment in case of jeopardy, see section
18 11-1937 of this subchapter.

19 § 11-1925 Limitations on assessment. (a) General. Except as otherwise
20 provided in this section, any tax under this chapter shall be assessed
21 within three years after the return was filed, whether or not such
22 return was filed on or after the date prescribed.

23 (b) Exceptions. (1) Assessment at any time. The tax may be assessed at
24 any time if:

25 (A) no return is filed,

26 (B) a false or fraudulent return is filed with intent to evade tax, or

27 (C) the taxpayer fails to comply with section 11-1922 of this chapter
28 in not reporting a change or correction increasing his or her federal or
29 New York state taxable income or self-employment income as reported on
30 the taxpayer's federal or New York state tax return, or the execution of
31 a notice of waiver and the changes or corrections on which it is based
32 or in not reporting an assessment or a change or correction which is
33 treated in the same manner as if it were a deficiency for federal or New
34 York state income tax purposes, or in not filing an amended return.

35 (2) Extension by agreement. Where, before the expiration of the time
36 prescribed in this section for the assessment of tax, both the commis-
37 sioner and the taxpayer have consented in writing to its assessment
38 after such time, the tax may be assessed at any time prior to the expi-
39 ration of the period agreed upon. The period so agreed upon may be
40 extended by subsequent agreements in writing made before the expiration
41 of the period previously agreed upon.

42 (3) Report of changed or corrected federal or New York state income.
43 If the taxpayer shall, pursuant to section 11-1922 of this chapter,
44 report a change or correction or file an amended return increasing the
45 taxpayer's federal or New York state taxable income or earnings from
46 self-employment or report an assessment or a change or correction which
47 is treated in the same manner as if it were a deficiency for federal or
48 New York state income tax purposes, the assessment, if not deemed to
49 have been made upon the filing of the report or amended return, may be
50 made at any time within two years after such report or amended return
51 was filed. The amount of such assessment of tax shall not exceed the
52 amount of the increase in city tax on earnings attributable to such
53 federal or New York state change or correction. The provisions of this
54 paragraph shall not affect the time within which or the amount for which
55 an assessment may otherwise be made.

1 (4) Recovery of erroneous refund. An erroneous refund shall be consid-
2 ered an underpayment of tax on the date made, and an assessment of a
3 deficiency arising out of an erroneous refund may be made at any time
4 within two years from the making of the refund, except that the assess-
5 ment may be made within five years from the making of the refund if it
6 appears that any part of the refund was induced by fraud or misrepresen-
7 tation of a material fact.

8 (5) Request for prompt assessment. If a return is required for a dece-
9 dent or for the decedent's estate during the period of administration,
10 the tax shall be assessed within eighteen months after written request
11 therefor, made after the return is filed, by the executor, administrator
12 or other person representing the estate of such decedent, but not more
13 than three years after the return was filed, except as otherwise
14 provided in this subdivision and subdivision (c) of this section.

15 (c) Omission of income on return. The tax may be assessed at any time
16 within six years after the return was filed if a taxpayer omits from a
17 return an amount properly includible therein which is in excess of twen-
18 ty-five per centum of the amount of the gross income derived by the
19 taxpayer from any trade or business.

20 For purposes of this subdivision there shall not be taken into account
21 any amount which is omitted in the return if such amount is disclosed in
22 the return, or in a statement attached to the return, in a manner
23 adequate to apprise the commissioner of the nature and amount of such
24 item.

25 (d) Suspension of running of period of limitation. The running of the
26 period of limitations on or collection of tax or other amount, or of a
27 transferee's liability, shall, after the mailing of a notice of defi-
28 ciency, be suspended for the period during which the commissioner is
29 prohibited under subdivision (c) of section 11-1923 of this subchapter
30 collecting by levy or proceeding in court.

31 § 11-1926 Interest on underpayment. (a) General. If any amount of tax
32 is not paid on or before the last date prescribed in this chapter for
33 payment, interest on such amount at the appropriate rates prescribed for
34 underpayments of tax under chapter seventeen of this title shall be paid
35 for the period from such last date to the date paid, whether or not any
36 extension of time for payment was granted. Interest under this subdivi-
37 sion shall not be paid if the amount thereof is less than one dollar.
38 If the time for filing a return of tax withheld by an employer is
39 extended, the employer shall pay interest for the period for which the
40 extension is granted and may not charge such interest to the employee.

41 (c) Exception for mathematical error. No interest shall be imposed on
42 any underpayment of tax due solely to mathematical error if the taxpayer
43 files a return within the time prescribed in this chapter, including any
44 extension of time, and pays the amount of underpayment within three
45 months after the due date of such return, as it may be extended.

46 (d) No interest on interest. No interest under this chapter shall be
47 imposed on any interest provided by this chapter.

48 (e) Suspension of interest on deficiencies. If a waiver of
49 restrictions on collection of an assessment of a deficiency has been
50 filed by the taxpayer, and if notice and demand by the commissioner for
51 payment of such assessed deficiency is not made within thirty days after
52 the filing of such waiver, interest shall not be imposed on such defi-
53 ciency for the period beginning immediately after such thirtieth day and
54 ending with the date of notice and demand.

55 (f) Interest treated as tax. Interest under this section shall be
56 paid upon notice and demand and shall be assessed, collected and paid in

1 the same manner as tax. Any reference in this chapter to the tax
2 imposed by this chapter shall be deemed also to refer to interest
3 imposed by this section on such tax.

4 (g) Interest on penalties or additions to tax. Interest shall be
5 imposed under subdivision (a) of this section in respect of any assess-
6 able penalty or addition to tax only if such assessable penalty or addi-
7 tion to tax is not paid within ten days from the date of the notice and
8 demand therefor under subdivision (b) of section 11-1934 of this
9 subchapter, and in such case interest shall be imposed only for the
10 period from such date of the notice and demand to the date of payment.

11 (h) Payment prior to notice of deficiency. If, prior to the mailing
12 to the taxpayer of a notice of deficiency under subdivision (b) of
13 section 11-1923 of this subchapter, the commissioner mails to the
14 taxpayer a notice of proposed increase of tax and within thirty days
15 after the date of the notice of proposed increase the taxpayer pays all
16 amounts shown on the notice to be due to the commissioner, no interest
17 under this section on the amount so paid shall be imposed for the period
18 after the date of such notice of proposed increase.

19 (i) Payment within ninety days after notice of deficiency. If a
20 notice of deficiency under section 11-1923 of this subchapter is mailed
21 to the taxpayer, and the total amount specified in such notice is paid
22 on or before the ninetieth day after the date of mailing, interest under
23 this section shall not be imposed for the period after the date of the
24 notice.

25 (j) Payment within ten days after notice and demand. If notice and
26 demand is made for payment of any amount under subdivision (b) of
27 section 11-1934 of this subchapter, and if such amount is paid within
28 ten days after the date of such notice and demand, interest under this
29 section on the amount so paid shall not be imposed for the period after
30 the date of such notice and demand.

31 (k) Limitation on assessment and collection. Interest prescribed
32 under this section may be assessed and collected at any time during the
33 period within which the tax or other amount to which such interest
34 relates may be assessed and collected, respectively.

35 (l) Interest on erroneous refund. Any portion of tax or other amount
36 which has been erroneously refunded, and which is recoverable by the
37 commissioner, shall bear interest at the rate of six per centum per
38 annum from the date of the payment of the refund, but only if it appears
39 that any part of the refund was induced by fraud or a misrepresentation
40 of a material fact.

41 (m) Satisfaction by credits. If any portion of a tax is satisfied by
42 credit of an overpayment, then no interest shall be imposed under this
43 section on the portion of the tax so satisfied for any period during
44 which, if the credit had not been made, interest would have been allow-
45 able with respect to such overpayment.

46 § 11-1927 Additions to tax and civil penalties. (a) Failure to file
47 tax return. In case of failure to file a tax return under this chapter
48 on or before the prescribed date, determined with regard to any exten-
49 sion of time for filing, unless it is shown that such failure is due to
50 reasonable cause and not due to willful neglect, there shall be added to
51 the amount required to be shown as tax on such return five percent of
52 the amount of such tax if the failure is for not more than one month,
53 with an additional five percent for each additional month or fraction
54 thereof during which such failure continues, not exceeding twenty-five
55 percent in the aggregate. For this purpose, the amount of tax required
56 to be shown on the return shall be reduced by the amount of any part of

1 the tax which is paid on or before the date prescribed for payment of
2 the tax and by the amount of any credit against the tax which may be
3 claimed upon the return.

4 (b) Deficiency due to negligence. If any part of a deficiency is due
5 to negligence or intentional disregard of this chapter or rules or regu-
6 lations hereunder, but without intent to defraud, there shall be added
7 to the tax an amount equal to five percent of the deficiency.

8 (c) Failure to file declaration or underpayment of estimated tax. If
9 any taxpayer fails to file a declaration of estimated tax or fails to
10 pay all or any part of an installment of estimated tax, the taxpayer
11 shall be deemed to have made an underpayment of estimated tax. There
12 shall be added to the tax for the taxable year an amount at the rate of
13 six per centum upon the amount of the underpayment for the period of the
14 underpayment but not beyond the fifteenth day of the fourth month
15 following the close of the taxable year. The amount of underpayment
16 shall be the excess of the amount of the installment which would be
17 required to be paid if the estimated tax were equal to seventy percent
18 of the tax attributable to net earnings from self employment shown on
19 the tax return for the taxable year, or if no return was filed, of the
20 tax so attributable for such year, over the amount, if any, of the
21 installment paid on or before the last day prescribed for such payment.
22 No underpayment shall be deemed to exist with respect to a declaration
23 or installment otherwise due on or after the taxpayer's death.

24 (d) Exception to addition for underpayment of estimated tax. The addi-
25 tion to tax under subdivision (c) of this section with respect to any
26 underpayment of any installment shall not be imposed if the total amount
27 of all payments of estimated tax made on or before the last date
28 prescribed for the payment of such installment equals or exceeds which-
29 ever of the following is the lesser:

30 (1) The amount which would have been required to be paid on or before
31 such date if the estimated tax were whichever of the following is the
32 lesser:

33 (A) The tax attributable to net earnings from self-employment shown on
34 the return of the individual for the preceding taxable year, if a return
35 showing a liability for tax was filed by the individual for the preced-
36 ing taxable year and such preceding year was a taxable year of twelve
37 months, or

38 (B) An amount equal to seventy percent of the tax so attributable for
39 the taxable year computed by placing on an annualized basis the taxable
40 net earnings from self-employment for the months in the taxable year
41 ending before the month in which the installment is required to be paid.
42 For purposes of this subparagraph, the taxable net earnings from self-
43 employment shall be placed on an annualized basis by:

44 (i) multiplying by twelve, or, in the case of a taxable year of less
45 than twelve months, the number of months in the taxable year, the taxa-
46 ble net earnings from self-employment for the months in the taxable year
47 ending before the month in which the installment is required to be
48 paid,

49 (ii) dividing the resulting amount by the number of months in the
50 taxable year ending before the month in which such installment date
51 falls, and

52 (iii) deducting from such amount the proper proportion of the exclu-
53 sion allowable for the taxable year by subdivision (b) of section
54 11-1902 of this chapter; or

55 (2) An amount equal to ninety percent of the tax computed, at the
56 rates applicable to the taxable year, on the basis of the actual taxable

1 net earnings from self-employment for the months in the taxable year
2 ending before the month in which the installment is required to be paid.

3 (e) Deficiency due to fraud. If any part of a deficiency is due to
4 fraud, there shall be added to the tax an amount equal to fifty percent
5 of the deficiency. This amount shall be in lieu of any other addition
6 to tax imposed by subdivision (a) or (b) of this section.

7 (f) Non-willful failure to pay withholding tax. If any employer, with-
8 out intent to evade or defeat any tax imposed by this chapter or the
9 payment thereof, shall fail to make a return and pay a tax withheld by
10 him or her at the time required by or under provisions of section
11 11-1912 of this chapter, such employer shall be liable for such tax and
12 shall pay the same together with interest thereon and the addition to
13 tax provided in subdivision (a) of this section, and such interest and
14 addition to tax shall not be charged to or collected from the employee
15 by the employer. The commissioner shall have the same rights and powers
16 for the collection of such tax, interest and addition to tax against
17 such employer as are now prescribed by this chapter for the collection
18 of tax against an individual taxpayer.

19 (g) Willful failure to collect and pay over tax. Any person required
20 to collect, truthfully account for, and pay over the tax imposed by this
21 chapter who willfully fails to collect such tax or truthfully account
22 for and pay over such tax or willfully attempts in any manner to evade
23 or defeat the tax or the payment thereof, shall, in addition to other
24 penalties provided by law, be liable to a penalty equal to the total
25 amount of the tax evaded, or not collected, or not accounted for and
26 paid over. No addition to tax under subdivision (b) or (e) of this
27 section shall be imposed for any offense to which this subdivision
28 applies.

29 (h) Failure to file certain information returns. In case of each fail-
30 ure to file a statement of a payment to another person, required under
31 authority of subdivision (c) of section 11-1921 of this chapter, relat-
32 ing to information at source, including the duplicate statement of tax
33 withheld on wages, on the date prescribed therefor, determined with
34 regard to any extension of time for filing, unless it is shown that such
35 failure is due to reasonable cause and not willful neglect, there shall,
36 upon notice and demand by the commissioner and in the same manner as
37 tax, be paid by the person so failing to file the statement, a penalty
38 of one dollar for each statement not so filed, but the total amount
39 imposed on the delinquent person for all such failures during any calen-
40 dar year shall not exceed one thousand dollars.

41 (i) Additional penalty. Any person who with fraudulent intent shall
42 fail to pay, or to deduct or withhold and pay, any tax, or to make,
43 render, sign or certify any return or declaration of estimated tax, or
44 to supply any information within the time required by or under this
45 chapter, shall be liable to a penalty of not more than one thousand
46 dollars, in addition to any other amounts required under this chapter,
47 to be imposed, assessed and collected by the commissioner. The commis-
48 sioner shall have the power, in his or her discretion, to waive, reduce
49 or compromise any penalty under this subdivision.

50 (j) Additions treated as tax. The additions to tax and penalties
51 provided by this section shall be paid upon notice and demand and shall
52 be assessed, collected and paid in the same manner as taxes, and any
53 reference in this chapter to tax or tax imposed by this chapter, shall
54 be deemed also to refer to the additions to tax and penalties provided
55 by this section. For purposes of section 11-1923 of this subchapter,
56 this subdivision shall not apply to:

1 (1) any addition to tax under subdivision (a) of this section except
2 as to that portion attributable to a deficiency;

3 (2) any addition to tax under subdivision (c) of this section; and

4 (3) any additional penalty under subdivision (i) of this section.

5 (k) Determination of deficiency. For purposes of subdivisions (b) and
6 (e) of this section, the amount shown as the tax by the taxpayer upon
7 his or her return shall be taken into account in determining the amount
8 of the deficiency only if such return was filed on or before the last
9 day prescribed for the filing of such return, determined with regard to
10 any extension of time for such filing.

11 (l) Person defined. For purposes of subdivisions (g) and (i) of this
12 section, the term "person" includes an individual, corporation or part-
13 nership or an officer or employee of any corporation, including a
14 dissolved corporation, or a member or employee of any partnership, who
15 as such officer, employee, or member is under a duty to perform the act
16 in respect of which the violation occurs.

17 § 11-1928 Overpayment. (a) General. The commissioner, within the
18 applicable period of limitations, may credit an overpayment of tax and
19 interest on such overpayment against any liability in respect of any tax
20 imposed by this chapter or by another chapter or chapters of this title
21 on the person who made the overpayment, and the balance shall be
22 refunded. Any refund under this section shall be made only upon the
23 filing of a return.

24 (b) Excessive withholding. If the amount allowable as a credit for tax
25 withheld from the taxpayer exceeds his or her tax to which the credit
26 relates, the excess shall be considered an overpayment.

27 (c) Overpayment by employer. If there has been an overpayment of tax
28 required to be deducted and withheld under section 11-1908 of this chap-
29 ter, refund shall be made to the employer only to the extent that the
30 amount of the overpayment was not deducted and withheld by the employer.

31 (d) Credits against estimated tax. The commissioner may prescribe
32 regulations providing for the crediting against the estimated tax for
33 any taxable year of the amount determined to be an overpayment of the
34 tax for a preceding taxable year. If any overpayment of tax is so
35 claimed as a credit against estimated tax for the succeeding taxable
36 year, such amount shall be considered as a payment of the tax for the
37 succeeding taxable year, whether or not claimed as a credit in the
38 declaration of estimated tax for such succeeding taxable year, and no
39 claim for credit or refund of such overpayment shall be allowed for the
40 taxable year for which the overpayment arises.

41 (e) Rule where no tax liability. If there is no tax liability for a
42 period in respect of which an amount is paid as tax, such amount shall
43 be considered an overpayment.

44 (f) Assessment and collection after limitation period. If any amount
45 of tax is assessed or collected after the expiration of the period of
46 limitations properly applicable thereto, such amount shall be considered
47 an overpayment.

48 (g) Notwithstanding any provision of law in article fifty-two of the
49 civil practice law and rules to the contrary, the procedures for the
50 enforcement of money judgments shall not apply to the department of
51 finance, or to any officer or employee of the department of finance, as
52 a garnishee, with respect to any amount of money to be refunded or cred-
53 ited to a taxpayer under this chapter.

54 § 11-1929 Limitations on credit or refund. (a) General. Claim for
55 credit or refund of an overpayment of tax shall be filed by the taxpayer
56 within three years from the time the return was filed or two years from

1 the time the tax was paid, whichever of such periods expires the later,
2 or if no return was filed, within two years from the time the tax was
3 paid. If the claim is filed within the three year period, the amount of
4 the credit or refund shall not exceed the portion of the tax paid within
5 the three years immediately preceding the filing of the claim plus the
6 period of any extension of time for filing the return. If the claim is
7 not filed within the three year period, but is filed within the two year
8 period, the amount of the credit or refund shall not exceed the portion
9 of the tax paid during the two years immediately preceding the filing of
10 the claim. Except as otherwise provided in this section, if no claim is
11 filed, the amount of a credit or refund shall not exceed the amount
12 which would be allowable if a claim had been filed on the date the cred-
13 it or refund is allowed.

14 (b) Extension of time by agreement. If an agreement under the
15 provisions of paragraph two of subdivision (b) of section 11-1925 of
16 this subchapter, extending the period for assessment of tax, is made
17 within the period prescribed in subdivision (a) of this section for the
18 filing of a claim for credit or refund, the period for filing a claim
19 for credit or refund, or for making credit or refund if no claim is
20 filed, shall not expire prior to six months after the expiration of the
21 period within which an assessment may be made pursuant to the agreement
22 or any extension thereof. The amount of such credit or refund shall not
23 exceed the portion of the tax paid after the execution of the agreement
24 and before the filing of the claim or the making of the credit or
25 refund, as the case may be, plus the portion of the tax paid within the
26 period which would be applicable under subdivision (a) of this section
27 if a claim had been filed on the date the agreement was executed.

28 (c) Notice of change or correction of federal or New York state
29 income. If a taxpayer is required by section 11-1922 of this chapter to
30 report a change or correction in federal or New York state taxable
31 income or self-employment income reported on his or her federal or New
32 York state tax return, or to report an assessment or a change or
33 correction which is treated in the same manner as if it were an overpay-
34 ment for federal or New York state income tax purposes, or to file an
35 amended return with the commissioner, claim for credit or refund of any
36 resulting overpayment of tax shall be filed by the taxpayer within two
37 years from the time the notice of such change or correction or such
38 amended return was required to be filed with the commissioner. If the
39 report or amended return required by section 11-1922 of this chapter is
40 not filed within the ninety day period therein specified, interest on
41 any resulting refund or credit shall cease to accrue after such nineti-
42 eth day. The amount of such credit or refund shall not exceed the
43 amount of the reduction in tax attributable to such federal or New York
44 state change, correction or items amended on the taxpayer's amended
45 federal or New York state income tax or self-employment tax return.
46 This subdivision shall not affect the time within which or the amount
47 for which a claim for credit or refund may be filed apart from this
48 subdivision.

49 (d) Failure to file claim within prescribed period. No credit or
50 refund shall be allowed or made, except as provided in subdivision (e)
51 of this section or subdivision (d) of section 11-1932 of this subchapter
52 after the expiration of the applicable period of limitation specified in
53 this chapter unless a claim for credit or refund is filed by the taxpay-
54 er within such period. Any later credit shall be void and any later
55 refund erroneous. No period of limitations specified in any other law

1 shall apply to the recovery by a taxpayer of moneys paid in respect of
2 taxes under this chapter.

3 (e) Effect of petition to commissioner. If a notice of deficiency for
4 a taxable year has been mailed to the taxpayer under section 11-1923 of
5 this subchapter and if the taxpayer files a timely petition with the
6 commissioner under section 11-1931 of this subchapter, the commissioner
7 may determine that the taxpayer has made an overpayment for such year,
8 whether or not the commissioner also determines a deficiency for such
9 year. No separate claim for credit or refund for such year shall be
10 filed, and no credit or refund for such year shall be allowed or made,
11 except:

12 (1) as to overpayments determined by a decision of the commissioner
13 which has become final;

14 (2) as to any amount collected in excess of an amount computed in
15 accordance with the decision of the commissioner which has become final;

16 (3) as to any amount collected after the period of limitation upon the
17 making of levy for collection has expired; and

18 (4) as to any amount claimed as a result of a change or correction
19 described in subdivision (c) of this section.

20 (f) Limit on amount of credit or refund. The amount of overpayment
21 determined under subdivision (e) of this section shall, when the deci-
22 sion of the commissioner has become final, be credited or refunded in
23 accordance with subdivision (a) of section 11-1928 of this subchapter
24 and shall not exceed the amount of tax which the commissioner determines
25 as part of his or her decision was paid:

26 (1) after the mailing of the notice of deficiency, or

27 (2) within the period which would be applicable under subdivision (a),
28 (b) or (c) of this section, if on the date of the mailing of the notice
29 of deficiency a claim has been filed, whether or not filed, stating the
30 grounds upon which the commissioner finds that there is an overpayment.

31 (g) Early return. For purposes of this section, any return filed
32 before the last day prescribed for the filing thereof shall be consid-
33 ered as filed on such last day, determined without regard to any exten-
34 sion of time granted the taxpayer.

35 (h) Prepaid tax. For purposes of this section, any tax paid by the
36 taxpayer before the last day prescribed for its payment, any tax with-
37 held from the taxpayer during any calendar year, and any amount paid by
38 the taxpayer as estimated tax for a taxable year shall be deemed to have
39 been paid by the taxpayer on the fifteenth day of the fourth month
40 following the close of his or her taxable year with respect to which
41 such amount constitutes a credit or payment.

42 (i) Return and payment of withholding tax. Notwithstanding subdivision
43 (g) of this section, for purposes of this section with respect to any
44 withholding tax:

45 (1) if a return for any period ending with or within a calendar year
46 is filed before April fifteenth of the succeeding calendar year, such
47 return shall be considered filed on April fifteenth of such succeeding
48 calendar year; and

49 (2) if a tax with respect to remuneration paid during any period
50 ending with or within a calendar year is paid before April fifteenth of
51 the succeeding calendar year, such tax shall be considered paid on April
52 fifteenth of such succeeding calendar year.

53 (j) Cross reference. For provision barring refund of overpayment cred-
54 ited against tax of a succeeding year, see subdivision (d) of section
55 11-1928 of this subchapter.

1 § 11-1930 Interest on overpayment. (a) General. Notwithstanding the
2 provisions of section three-a of the general municipal law, interest
3 shall be allowed and paid as follows at the appropriate rates prescribed
4 for overpayments of tax under chapter seventeen of this title upon any
5 overpayment in respect of the tax imposed by this chapter:

6 (1) from the date of the overpayment to the due date of an amount
7 against which a credit is taken; or

8 (2) from the date of the overpayment to a date, to be determined by
9 the commissioner, preceding the date of a refund check by not more than
10 thirty days, whether or not such refund check is accepted by the taxpay-
11 er after tender of such check to the taxpayer. The acceptance of such
12 check shall be without prejudice to any right of the taxpayer to claim
13 any additional overpayment and interest thereon.

14 No interest shall be allowed or paid if the amount thereof is less
15 than one dollar.

16 (b) Advance payment of tax, payment of estimated tax, and credit for
17 tax withholding. The provisions of subdivisions (g), (h) and (i) of
18 section 11-1929 of this subchapter applicable in determining the date of
19 payment of tax for purposes of determining the period of limitations on
20 credit or refund, shall be applicable in determining the date of payment
21 for purposes of this section.

22 (c) Refund within three months of due date of tax. If any overpayment
23 of tax imposed by this chapter is refunded within three months after the
24 last date prescribed, or permitted by extension of time, for filing the
25 return of such tax or within three months after the return was filed,
26 whichever is later, no interest shall be allowed under this section on
27 such overpayment.

28 (d) Cross-reference. For provision terminating interest after failure
29 to file notice of federal or New York state change under section 11-1922
30 of this chapter, see subdivision (c) of 11-1929 of this subchapter.

31 § 11-1931 Petition to commissioner. (a) General. The form of a peti-
32 tion to the commissioner, and further proceedings before the commission-
33 er in any case initiated by the filing of a petition, shall be governed
34 by such rules as the commissioner shall prescribe. No petition shall be
35 denied in whole or in part without opportunity for a hearing on reason-
36 able prior notice. Such hearing shall be conducted by the commissioner,
37 or by a hearing officer designated by the commissioner to take evidence
38 and report to the commissioner. The commissioner shall decide the case
39 as quickly as practicable. Notice of the decision shall be mailed
40 promptly to the taxpayer by certified or registered mail at his or her
41 last known address and such notice shall set forth the commissioner's
42 findings of fact and a brief statement of the grounds of decision in
43 each case decided in whole or in part adversely to the taxpayer. Any
44 portion of an assessment of a deficiency disallowed by the commission-
45 er's decision, shall be forthwith abated, or if paid, credited or
46 refunded to the taxpayer without the making of a claim therefor.

47 (b) Petition for redetermination of a deficiency. Within ninety days,
48 or one hundred fifty days if the notice is addressed to a person outside
49 of the United States, after the mailing of the notice of deficiency
50 authorized by section 11-1923 of this subchapter, the taxpayer may file
51 a petition with the commissioner for a redetermination of the deficien-
52 cy. Such petition may also assert a claim for refund for the same taxa-
53 ble year or years, subject to the limitations of subdivision (f) of
54 section 11-1929 of this subchapter.

55 (c) Petition for refund. A taxpayer may file a petition with the
56 commissioner for the amounts asserted in a claim for refund if:

- 1 (1) the taxpayer has filed a timely claim for refund with the commis-
2 sioner,
- 3 (2) the taxpayer has not previously filed with the commissioner a
4 timely petition under subdivision (b) of this section for the same
5 taxable year unless the petition under this subdivision relates to a
6 separate claim for credit or refund properly filed under subdivision (e)
7 of section 11-1929 of this subchapter, and
- 8 (3) either: (A) six months have expired since the claim was filed, or
9 (B) the commissioner has mailed to the taxpayer, by registered or certi-
10 fied mail, a notice of disallowance of such claim in whole or in part.
11 No petition under this subdivision shall be filed more than two years
12 after the date of mailing of a notice of disallowance, unless prior to
13 the expiration of such a two-year period it has been extended by writ-
14 ten agreement between the taxpayer and the commissioner. If a taxpayer
15 files a written waiver of the requirement that he or she be mailed a
16 notice of disallowance, the two year period prescribed by this subdivi-
17 sion for filing a petition for refund shall begin on the date such waiv-
18 er is filed.
- 19 (d) Assertion and assessment of deficiency after filing petition.
- 20 (1) Petition for redetermination of deficiency. If a taxpayer files
21 with the commissioner a petition for redetermination of a deficiency,
22 the commissioner shall have power to determine and assess a greater
23 deficiency than asserted in the notice of deficiency and to determine
24 and assess any addition to tax or penalty provided in section 11-1927 of
25 this subchapter, if claim therefor is asserted at or before the hearing
26 and within the period in which an assessment would be timely under
27 section 11-1925 of this subchapter under the rules of the commissioner.
- 28 (2) Petition for refund. If the taxpayer files with the commissioner a
29 petition for credit or refund for a taxable year, the commissioner may:
30 (A) determine and assess a deficiency for such year as to any amount
31 of deficiency claim, which shall be an assessment, for which is asserted
32 at or before the hearing under rules of the commissioner, and within the
33 period in which an assessment would be timely under section 11-1925 of
34 this subchapter, or
35 (B) deny so much of the amount for which credit or refund is sought in
36 the petition, as is offset by other issues pertaining to the same taxa-
37 ble year which are asserted at or before the hearing under rules of the
38 commissioner.
- 39 (3) Opportunity to respond. A taxpayer shall be given a reasonable
40 opportunity to respond to any matters asserted by the commissioner under
41 this subdivision.
- 42 (4) Restriction on further notices of deficiency. If the taxpayer
43 files a petition with the commissioner under this section, no notice of
44 deficiency under section 11-1923 of this subchapter may thereafter be
45 issued by the commissioner for the same taxable year, except in case of
46 fraud or with respect to a change or correction in federal or New York
47 state taxable income or self-employment income required to be reported
48 under section 11-1922 of this chapter.
- 49 (e) Burden of proof. In any case before the commissioner under this
50 chapter, the burden of proof shall be upon the petitioner except for the
51 following issues, as to which the burden of proof shall be upon the
52 commissioner:
- 53 (1) whether the petitioner has been guilty of fraud with intent to
54 evade tax;
- 55 (2) whether the petitioner is liable as the transferee of property of
56 a taxpayer, except where the petitioner's liability arises by reason of

1 section 11-1936 of this subchapter, but not to show that the taxpayer
2 was liable for the tax; and

3 (3) whether the petitioner is liable for any increase in a deficiency
4 where such increase is asserted initially after a notice of deficiency
5 was mailed and a petition under this section filed, unless such increase
6 in deficiency is the result of a change or correction of federal or New
7 York state taxable income or self-employment income required to be
8 reported under section 11-1922 of this chapter, and of which change or
9 correction the commissioner had no notice at the time he or she mailed
10 the notice of deficiency.

11 (f) Evidence of related federal determination. Evidence of a federal
12 determination relating to issues raised in a case before the commission-
13 er under this section shall be admissible, under rules established by
14 the commissioner.

15 (g) Jurisdiction over other years. The commissioner shall consider
16 such facts with relation to the taxes for other years as may be neces-
17 sary correctly to determine the tax for the taxable year, but in so
18 doing shall have no jurisdiction to determine whether or not the tax for
19 any other year has been overpaid or underpaid.

20 § 11-1932 Review of commissioner's decision. (a) General. A decision
21 of the commissioner shall be subject to judicial review for error, ille-
22 gality or unconstitutionality at the instance of any taxpayer affected
23 thereby in the manner provided by law for the review of a final decision
24 or action of administrative agencies of the city. An application by a
25 taxpayer for such review must be made within four months after notice of
26 the decision is sent by certified or registered mail to the taxpayer.

27 (b) Judicial review exclusive remedy of taxpayer. The review of a
28 decision of the commissioner provided by this section shall be exclusive
29 remedy available to any taxpayer for the judicial determination of the
30 liability of the taxpayer for the taxes imposed by this chapter.

31 (c) Collection pending review; review bond. Irrespective of any
32 restrictions on the collection of assessments for deficiencies, the
33 commissioner may collect by levy or, otherwise any assessment of a defi-
34 ciency after the expiration of the period specified in subdivision (a)
35 of this section, notwithstanding that an application for judicial review
36 in respect of such deficiency has been duly made by the taxpayer, unless
37 the taxpayer, at or before the time his or her application for review is
38 made, has paid the assessed deficiency, has deposited with the commis-
39 sioner the amount of the assessed deficiency, or has filed with the
40 commissioner a bond, which may be a jeopardy bond under subdivision (h)
41 of section 11-1937 of this subchapter, in the amount of the portion of
42 the assessed deficiency, including interest and other amounts, in
43 respect of which the application for review is made with surety approved
44 by a justice of the supreme court of the state of New York, conditioned
45 upon the payment of the assessed deficiency, including interest and
46 other amounts, as finally determined. If as a result of a waiver of the
47 restrictions on the collection of a deficiency any part of the amount
48 determined by the commissioner is paid after the filing of the review
49 bond, such bond shall, at the request of the taxpayer, be proportionate-
50 ly reduced. A similar bond for all costs and charges which may accrue
51 against the taxpayer in the prosecution of such judicial review proceed-
52 ing must be filed with the commissioner before any such proceeding is
53 instituted.

54 (d) Credit, refund or abatement after review. If the amount of a defi-
55 ciency assessed and determined by the commissioner is disallowed in
56 whole or in part by the court of review, the amount so disallowed shall

1 be credited or refunded to the taxpayer, without the making of claim
2 therefor, or, if payment has not been made, shall be abated.

3 (e) Date of finality of commissioner's decision. A decision of the
4 commissioner shall become final upon the expiration of the period speci-
5 fied in subdivision (a) of this section for making an application for
6 review, if no such application has been duly made within such time, or
7 if such application has been duly made, upon expiration of the time for
8 all further judicial review, or upon the rendering by the commissioner
9 of a decision in accordance with the mandate of the court on review.
10 Provided, however, for the purpose of making an application for review,
11 the decision of the commissioner shall be deemed final on the date the
12 notice of decision is sent by certified or registered mail to the
13 taxpayer.

14 § 11-1933 Mailing rules; holidays. (a) Timely mailing. If any claim,
15 statement, notice, petition, or other document, including to the extent
16 authorized by the commissioner, a return or declaration of estimated
17 tax, required to be filed within a prescribed period or on or before a
18 prescribed date under authority of any provision of this chapter is,
19 after such period or such date, delivered by the United States mail to
20 the commissioner, bureau, office, officer or person with which or with
21 whom such document is required to be filed, the date of the United
22 States postmark stamped on the envelope shall be deemed to be the date
23 of delivery. This subdivision shall apply only if the postmark date
24 falls within the prescribed period or on or before the prescribed date
25 for the filing of such document, determined with regard to any extension
26 granted for such filing, and only if such document was deposited in the
27 mail, postage prepaid, properly addressed to the commissioner, bureau,
28 office, officer or person with which or with whom the document is
29 required to be filed. If any document is sent by United States regis-
30 tered mail, such registration shall be prima facie evidence that such
31 document was delivered to the commissioner, bureau, office, officer or
32 person to which or to whom addressed. To the extent that the commis-
33 sioner shall prescribe by regulation, certified mail may be used in lieu
34 of registered mail under this section. This subdivision shall apply in
35 the case of postmarks not made by the United States post office only if
36 and to the extent provided by regulations of the commissioner.

37 (b) Last known address. For purposes of this chapter, a taxpayer's
38 last known address shall be the address given in the last return filed
39 by the taxpayer, unless subsequent to the filing of such return the
40 taxpayer shall have notified the commissioner of a change of address.

41 (c) Last day a Saturday, Sunday or legal holiday. When the last day
42 prescribed under authority of this chapter, including any extension of
43 time, for performing any act falls on Saturday, Sunday, or a legal holi-
44 day in the state of New York, the performance of such act shall be
45 considered timely if it is performed on the next succeeding day which is
46 not a Saturday, Sunday or a legal holiday.

47 § 11-1934 Collection, levy and liens. (a) Collection procedures. The
48 taxes imposed by this chapter shall be collected by the commissioner,
49 and he or she may establish the mode or time for the collection of any
50 amount due the commissioner under this chapter if not otherwise speci-
51 fied. The commissioner shall, upon request, give a receipt for any sum
52 collected under this chapter. The commissioner may authorize banks or
53 trust companies which are depositories or financial agents of the city
54 to receive and give a receipt for any tax imposed under this chapter in
55 such manner, at such times, and under such conditions as the commis-
56 sioner may prescribe; and the commissioner shall prescribe the manner, times

1 and conditions under which the receipt of such tax by such banks and
2 trust companies is to be treated as payment of such tax to the commis-
3 sioner.

4 (b) Notice and demand for tax. The commissioner shall as soon as prac-
5 ticable and, in the case of an assessment the collection of which is
6 restricted by the provisions of subdivision (c) of section 11-1923 of
7 this subchapter, as soon as practicable after the expiration of such
8 restrictions give notice to each person liable for any amount of tax,
9 addition to tax, penalty or interest, which has been assessed but
10 remains unpaid, stating the amount and demanding payment thereof. Such
11 notice shall be left at the dwelling or usual place of business of such
12 person or shall be sent by mail to such person's last known address.
13 Except where the commissioner determines that collection would be jeop-
14 ardized by delay, if any tax is assessed prior to the last date, includ-
15 ing any date fixed by extension, prescribed for payment of such tax,
16 payment of such tax shall not be demanded until after such date.

17 (c) Issuance of warrant after notice and demand. If any person liable
18 under this chapter for the payment of any tax, addition to tax, penalty
19 or interest neglects or refuses to pay the same within ten days after
20 notice and demand therefor is given to such person under subdivision (b)
21 of this section, the commissioner may within six years after the date of
22 the expiration of the period of restriction on the collection of such
23 assessment issue a warrant directed to the sheriff of any county of the
24 state, or to any officer or employee of the department of finance of the
25 city, commanding the sheriff or such officer or employee to levy upon
26 and sell such person's real and personal property for the payment of the
27 amount assessed, with the cost of executing the warrant, and to return
28 such warrant to the commissioner and pay to him or her the money
29 collected by virtue thereof within sixty days after the receipt of the
30 warrant. If the commissioner finds that the collection of tax or other
31 amount is in jeopardy, notice and demand for immediate payment of such
32 tax may be made by the commissioner and upon failure or refusal to pay
33 such tax or other amount the commissioner may issue a warrant without
34 regard to the ten-day period provided in this subdivision.

35 (d) Copy of warrant to be filed and lien to be created. Any sheriff or
36 officer or employee who receives a warrant under subdivision (c) of this
37 section shall within five days thereafter file a copy with the clerk of
38 the appropriate county. The clerk shall thereupon enter in the judgment
39 docket, in the column for judgment debtors, the name of the taxpayer
40 mentioned in the warrant, and in appropriate columns the tax or other
41 amounts for which the warrant is issued and the date when such copy is
42 filed; and such amount shall thereupon be a binding lien upon the real,
43 personal and other property of the taxpayer.

44 (e) Judgment. When a warrant has been filed with the county clerk the
45 commissioner shall, on behalf of the city, be deemed to have obtained
46 judgment against the taxpayer for the tax or other amounts.

47 (f) Execution. The sheriff or officer or employee shall thereupon
48 proceed upon the judgment in all respects, with like effect, and in the
49 same manner prescribed by law in respect to executions issued against
50 property upon judgments of a court of record, and a sheriff shall be
51 entitled to the same fees for such sheriff's services in executing the
52 warrant, to be collected in the same manner. An officer or employee of
53 the department of finance of the city may proceed in any county or coun-
54 ties of this state and shall have all the powers of execution conferred
55 by law upon sheriffs, but shall be entitled to no fee or compensation in

1 excess of actual expenses paid in connection with the execution of the
2 warrant.

3 (g) Taxpayer not then a resident. Where a notice and demand under
4 subdivision (b) of this section shall have been given to a taxpayer who
5 is not then a resident of this state, and it appears to the commissioner
6 that it is not practicable to find in this state property of the taxpay-
7 er sufficient to pay the entire balance of tax or other amount owing by
8 such taxpayer who is not then a resident of this state, the commissioner
9 may, in accordance with subdivision (c) of this section, issue a warrant
10 directed to an officer or employee of the department of finance of the
11 city a copy of which warrant shall be mailed by certified or registered
12 mail to the taxpayer at his or her last known address, subject to the
13 rules for mailing provided in subdivision (a) of section 11-1933 of this
14 subchapter. Such warrant shall command the officer or employee to
15 proceed in the city, and such officer or employee shall, within five
16 days after receipt of the warrant, file the warrant and obtain a judg-
17 ment in accordance with this section. Thereupon the commissioner may
18 authorize the institution of any action or proceeding to collect or
19 enforce the judgment in any place and by any procedure where and by
20 which a civil judgment of the supreme court of the state of New York
21 could be collected or enforced. The commissioner may also, in his or
22 her discretion, designate agents or retain counsel for the purpose of
23 collecting, outside the state of New York, any unpaid taxes, additions
24 to tax, penalties or interest which have been assessed under this chap-
25 ter against taxpayers who are not then residents of this state, may fix
26 the compensation of such agents and counsel to be paid out of money
27 appropriated or otherwise lawfully available for payment thereof, and
28 may require of them bonds or other security for the faithful performance
29 of their duties, in such form and in such amount as the commissioner
30 shall deem proper and sufficient.

31 (h) Action by the city for recovery of taxes. Action may be brought by
32 the corporation counsel or other appropriate officer of the city at the
33 insistence of the commissioner to recover the amount of any unpaid
34 taxes, additions to tax, penalties or interest which have been assessed
35 under this chapter within six years prior to the date the action is
36 commenced. The period during which collection of any assessment is
37 prohibited by subdivision (c) of section 11-1923 of this subchapter,
38 shall be added to such six years.

39 (i) Release of lien. The commissioner, if he or she finds that the
40 interest of the city will not thereby be jeopardized, and upon such
41 conditions as may require, may release any property from the lien of any
42 warrant for unpaid taxes, additions to tax, penalties and interest filed
43 pursuant to this section, and such release may be recorded in the office
44 of any recording officer in which such warrant has been filed.

45 § 11-1935 Transferees. (a) General. The liability, at law or in equi-
46 ty, of a transferee of property of a taxpayer for any tax, additions to
47 tax, penalty or interest due to the city under this chapter, shall be
48 assessed, paid, and collected in the same manner and subject to the same
49 provisions and limitations as in the case of the tax to which liability
50 relates, except that the period of limitations for assessment against
51 the transferee shall be extended by one year for each successive trans-
52 fer, in order, from the original taxpayer to the transferee involved,
53 but not by more than three years in the aggregate. The term "transfer-
54 ee" includes donee, heir, legatee, devisee and distributee; and also
55 includes a person liable for the amount of any tax, additions to tax,

1 penalty or interest under the provisions of section 11-1936 of this
2 subchapter.

3 (b) Exceptions. (1) If before the expiration of the period of limita-
4 tions for assessment of liability of the transferee, a claim has been
5 filed by the commissioner in any court against the original taxpayer or
6 the last preceding transferee based upon the liability of the original
7 taxpayer, then the period of limitation for assessment of liability of
8 the transferee shall in no event expire prior to one year after such
9 claim has been finally allowed, disallowed or otherwise disposed of.

10 (2) If, before the expiration of the time prescribed in subdivision
11 (a) of this section or paragraph one of this subdivision for the assess-
12 ment of the liability, the commissioner and the transferee have both
13 consented in writing to its assessment after such time, the liability
14 may be assessed at any time prior to the expiration of the period agreed
15 upon. The period so agreed upon may be extended by subsequent agree-
16 ments in writing made before the expiration of the period previously
17 agreed upon. For the purpose of determining the period of limitation on
18 credit or refund to the transferee of overpayments of tax made by such
19 transferee or overpayments of tax made by the transferor as to which the
20 transferee is legally entitled to credit or refund, such agreement and
21 any extension thereof shall be deemed an agreement and extension thereof
22 referred to in subdivision (b) of section 11-1929 of this subchapter.
23 If the agreement is executed after the expiration of the period of limi-
24 tation for assessment against the original taxpayer, then in applying
25 the limitations under subdivision (b) of section 11-1929 of this
26 subchapter on the amount of the credit or refund, the periods specified
27 in subdivision (a) of section 11-1929 of this subchapter shall be
28 increased by the period from the date of such expiration to the date of
29 the agreement.

30 (c) Deceased transferor. If any person is deceased, the period of
31 limitation for assessment against such person shall be the period that
32 would be in effect if he or she had lived.

33 (d) Evidence. Notwithstanding the provisions of section 11-1942 of
34 this subchapter, the commissioner shall use his or her powers to make
35 available to the transferee evidence necessary to enable the transferee
36 to determine the liability of the original taxpayer and of any preceding
37 transferees, but without undue hardship to the original taxpayer or
38 preceding transferee. See subdivision (e) of section 11-1931 of this
39 subchapter for rule as to burden of proof.

40 § 11-1936 Liability of bulk transferees. Whenever there is made a
41 sale, transfer or assignment in bulk of any part or the whole of a stock
42 of merchandise or of fixtures, or merchandise and of fixtures pertaining
43 to the conducting of the business of the seller, transferor or assignor,
44 otherwise than in the ordinary course of trade and in the regular prose-
45 cution of said business, the purchaser, transferee or assignee shall at
46 least ten days before taking possession of such merchandise, fixtures,
47 or merchandise and fixtures, or paying therefor, notify the commissioner
48 by registered mail of the proposed sale and of the price, terms and
49 conditions thereof, whether or not the seller, transferor or assignor,
50 has represented to, or informed the purchaser, transferee or assignee,
51 that it owes any tax pursuant to this chapter, whether or not the
52 purchaser, transferee or assignee has knowledge that such taxes are
53 owing, and whether or not any such taxes are in fact owing.

54 Whenever the purchaser, transferee or assignee shall fail to give the
55 notice to the commissioner required by this section, or whenever the
56 commissioner shall inform the purchaser, transferee or assignee that a

1 possible claim for such tax or taxes exists, any sums of money, property
2 or choses in action, or other consideration, which the purchaser, trans-
3 feree or assignee is required to transfer over to the seller, transferor
4 or assignor shall be subject to a first priority right and lien for any
5 such taxes theretofore or thereafter determined to be due from the sell-
6 er, transferor or assignor to the city, and the purchaser, transferee or
7 assignee is forbidden to transfer to the seller, transferor or assignor
8 any such sums of money, property or choses in action to the extent of
9 the amount of the city's claim. For failure to comply with the
10 provisions of this subdivision the purchaser, transferee or assignee, in
11 addition to being subject to the liabilities and remedies imposed under
12 the provisions of article six of the uniform commercial code, shall be
13 personally liable for the payment to the city of any such taxes, there-
14 tofore or thereafter determined to be due to the city from the seller,
15 transferor or assignor and such liability may be assessed and enforced
16 in the same manner as the liability for tax is imposed under this chap-
17 ter.

18 § 11-1937 Jeopardy determination or assessment. (a) Authority for
19 making. If the commissioner believes that the assessment or collection
20 of a deficiency will be jeopardized by delay, he or she shall, notwith-
21 standing the provisions of sections 11-1923 and 11-1939 of this subchap-
22 ter, immediately assess or proceed to collect such deficiency, together
23 with all interest, penalties and additions to tax provided for by law,
24 and notice and demand shall be made by the commissioner for the payment
25 thereof.

26 (b) Notice of deficiency. If the jeopardy assessment is made before
27 any notice in respect of the tax to which the jeopardy assessment
28 relates has been mailed under section 11-1923 of this subchapter, then
29 the commissioner shall mail a notice under such section within sixty
30 days after making of the assessment.

31 (c) Amount assessable before decision of commissioner. The jeopardy
32 assessment may be made in respect of a deficiency greater or less than
33 that of which notice is mailed to the taxpayer and whether or not the
34 taxpayer has therefor filed a petition with the commissioner. The
35 commissioner may, at any time before rendering his or her decision,
36 abate such assessment or any unpaid portion thereof, to the extent that
37 he or she believes the assessment to be excessive in amount. The
38 commissioner may in his or her decision redetermine the entire amount of
39 the deficiency and of all amounts assessed at the same time in
40 connection therewith.

41 (d) Amount assessable after decision of commissioner. If the jeopardy
42 assessment of determination of jeopardy is made after the decision of
43 the commissioner is rendered, such assessment or determination may be
44 made only in respect of the deficiency determined by the commissioner in
45 his or her decision.

46 (e) Expiration of right to assess. A jeopardy determination may not be
47 made after the decision of the commissioner has become final or after
48 the taxpayer has made an application for review of the decision of the
49 commissioner.

50 (f) Collection of unpaid amounts. When a petition has been filed with
51 the commissioner and when the amount which should have been assessed has
52 been determined by a decision of the commissioner which has become
53 final, then any unpaid portion, the collection of which has been stayed
54 by bond, shall be collected as part of the tax upon notice and demand
55 from the commissioner, and any remaining portion of the assessment shall
56 be abated. If the amount already collected exceeds the amount deter-

1 mined as the amount which should have been assessed, such excess shall
2 be credited or refunded to the taxpayer as provided in section 11-1928
3 of this subchapter without the filing of claim therefor. If the amount
4 determined as the amount which should have been assessed is greater than
5 the amount actually assessed, then the difference shall be assessed and
6 shall be collected as part of the tax upon notice and demand from the
7 commissioner.

8 (g) Abatement if jeopardy does not exist. The commissioner may abate
9 the jeopardy determination if he or she finds that jeopardy does not
10 exist. Such abatement may not be made after a decision of the commis-
11 sioner in respect of the deficiency has been rendered or, if no petition
12 is filed with the commissioner, after the expiration of the period for
13 filing such petition. The period of limitation on the making of a levy
14 or a proceeding for collection, in respect of any deficiency, shall be
15 determined as if the jeopardy assessment so abated has not been made,
16 except that the running of such period shall in any event be suspended
17 for the period from the date of such jeopardy determination until the
18 expiration of the tenth day after the day on which such jeopardy deter-
19 mination is abated.

20 (h) Bond to stay collection. The collection of the whole or any amount
21 of any assessment determined to be in jeopardy may be stayed by filing
22 with the commissioner, within such time as may be fixed by regulation, a
23 bond in an amount equal to the amount as to which the stay is desired
24 conditioned upon the payment of the amount, together with interest ther-
25 eon, the collection of which is stayed at the time at which, but for the
26 making of the jeopardy assessment, such amount would be due. Upon the
27 filing of the bond, the collection of so much of the amount assessed as
28 is covered by the bond shall be stayed. The taxpayer shall have the
29 right to waive such stay at any time in respect of the whole or any part
30 of the amount covered by the bond and, if as a result of such waiver any
31 part of the amount covered by the bond is paid, then the bond shall, at
32 the request of the taxpayer, be proportionately reduced. If any portion
33 of the jeopardy assessment is abated, or if a notice of deficiency under
34 section 11-1923 of this subchapter is mailed to the taxpayer in a lesser
35 amount, the bond shall, at the request of the taxpayer, be proportion-
36 ately reduced.

37 (i) Petition to commissioner. If the bond is given before the taxpayer
38 has filed his or her petition under section 11-1931 of this subchapter,
39 the bond shall contain a further condition that if a petition is not
40 filed within the period provided in such section, then the amount, the
41 collection of which is stayed by the bond, will be paid on notice and
42 demand at any time after the expiration of such period, together with
43 interest thereon from the date of the jeopardy notice and demand to the
44 date of notice and demand under this subdivision. The bond shall be
45 conditioned upon the payment of so much of such assessment, collection
46 of which is stayed by the bond, as is not abated by a decision of the
47 commissioner which has become final. If the commissioner determines
48 that the amount assessed is greater than the amount which should have
49 been assessed, then the bond shall, at the request of the taxpayer, be
50 proportionately reduced when the decision of the commissioner is
51 rendered.

52 (j) Stay of sale of seized property pending commissioner's decision.
53 Where a jeopardy assessment or a determination of jeopardy is made, the
54 property seized for the collection of the tax shall not be sold:

55 (1) if subdivision (b) of this section is applicable, prior to the
56 issuance of the notice of deficiency and the expiration of the time

1 provided in section 11-1931 of this subchapter for filing a petition
2 with the commissioner, and

3 (2) if a petition is filed with the commissioner, whether before or
4 after the making of such jeopardy assessment or determination, prior to
5 the expiration of the period during which the collection of the defi-
6 ciency assessed would be prohibited if subdivision (a) of this section
7 were not applicable.

8 Such property may be sold if the taxpayer consents to the sale, or if
9 the commissioner determines that the expenses of conservation and main-
10 tenance will greatly reduce the net proceeds, or if the property is
11 perishable.

12 (k) Interest. For the purpose of subdivision (a) of section 11-1926 of
13 this subchapter, the last date prescribed for payment shall be deter-
14 mined without regard to any notice and demand for payment issued under
15 this section prior to the last date otherwise prescribed for such
16 payment.

17 (l) Early termination of taxable year. If the commissioner finds that
18 a taxpayer designs quickly to depart from this state or to remove his or
19 her property therefrom, or to conceal himself or herself or his or her
20 property therein, or to do any other act tending to prejudice or to
21 render wholly or partly ineffectual proceedings to collect the tax for
22 the current or the preceding taxable year unless such proceedings be
23 brought without delay, the commissioner shall declare the taxable period
24 for such taxpayer immediately terminated, and shall cause notice of such
25 finding and declaration to be given the taxpayer, together with a demand
26 for immediate payment of the tax for the taxable period so declared
27 terminated and of the tax for the preceding taxable year or so much of
28 such tax as is unpaid, whether or not the time otherwise allowed by law
29 for filing return and paying the tax has expired; and such taxes shall
30 thereupon become immediately due and payable. In any proceeding brought
31 to enforce payment of taxes made due and payable by virtue of the
32 provisions of this subdivision, the finding of the commissioner made as
33 herein provided, whether made after notice to the taxpayer or not, shall
34 be for all purposes presumptive evidence of jeopardy.

35 (m) Reopening of taxable period. Notwithstanding the termination of
36 the taxable period of the taxpayer with the commissioner as provided in
37 subdivision (1) of this section, the commissioner may reopen such taxa-
38 ble period each time the taxpayer is found by the commissioner to have
39 received wages or net earnings from self-employment, within the current
40 taxable year, since the termination of such period. A taxable period so
41 terminated by the commissioner may be reopened by the taxpayer if he or
42 she files with the commissioner a true and accurate return of taxable
43 wages and net earnings from self-employment under this chapter for such
44 taxable period, together with such other information as the commissioner
45 may by regulation prescribe.

46 (n) Furnishing of bond where taxable year is closed by the commis-
47 sioner. Payment of taxes shall not be enforced by any proceedings under
48 the provisions of subdivision (1) of this section prior to the expira-
49 tion of the time otherwise allowed for paying such taxes if the taxpayer
50 furnishes, under regulations prescribed by the commissioner, a bond to
51 insure the timely making of returns with respect to, and payment of,
52 such taxes or any taxes for prior years.

53 § 11-1938 Criminal penalties. (a) Attempt to evade tax. Any individ-
54 ual, corporation or partnership or any officer or employee of any corpo-
55 ration, or member or employee of any partnership, who, with intent to
56 evade any tax or any requirement of this chapter or any lawful require-

1 ment of the commissioner thereunder, shall fail to pay the tax, or to
2 make, render, sign or certify any return or declaration of estimated
3 tax, or to supply any information within the time required by or under
4 the provisions of this chapter, or who, with like intent, shall make,
5 render, sign or certify any false or fraudulent return, declaration or
6 statement, or shall supply any false or fraudulent information, or who
7 shall fail to comply with the provisions of subdivision (b) of section
8 11-1912 of this chapter after the service of a notice by the commission-
9 er thereunder, shall be guilty of a misdemeanor and shall, upon
10 conviction, be fined not to exceed five thousand dollars or be impri-
11 soned not to exceed one year, or both, at the discretion of the court.

12 (b) Limitations. Notwithstanding the provisions of section 30.10 of
13 the criminal procedure law or of any other law of this state, a prose-
14 cution for any offense under this section may be commenced at any time
15 not later than three years after the commission of such offense provided
16 that, if such offense is the failure to do an act required by or under
17 any provision of this chapter to be done before a certain date, a prose-
18 cution for such offense may be commenced not later than three years
19 after such date.

20 (c) Willful failure to withhold. Any individual, corporation or part-
21 nership or any officer or employee of any corporation, including a
22 dissolved corporation, or member or employee of any partnership, who
23 willfully fails to collect or pay over any withholding tax as required,
24 shall, in addition to other penalties provided by law, be guilty of a
25 misdemeanor, and, upon conviction thereof, shall be fined not to exceed
26 five thousand dollars or imprisoned not to exceed one year, or both.

27 (d) Two or more charges. In the prosecution of offenses under this
28 section, if there are two or more charges against any person or corpo-
29 ration, involving a violation or violations of any provision or
30 provisions of this chapter, whether for the same or different taxable
31 years, instead of returning several indictments or filing several infor-
32 mations, all of such charges may be joined in one indictment or informa-
33 tion, in separate counts, and if two or more indictments are found, or
34 two or more informations are filed, the court may order them to be
35 consolidated. If a person or corporation shall be convicted of two or
36 more offenses constituting different crimes set forth in different
37 counts of one indictment or information, or in separate indictments or
38 informations consolidated as hereinbefore provided, the court may impose
39 a separate sentence for each offense, and if imprisonment is imposed,
40 the court may order any of such sentences to be served concurrently or
41 consecutively.

42 (e) Miscellaneous rules. Any prosecution under this section may be
43 conducted in any county where the person or corporation to whose tax
44 liability the proceeding relates resides, or has a place of business, or
45 in any county in which any such crime is committed. The corporation
46 counsel of the city shall have concurrent jurisdiction with any district
47 attorney in the prosecution of any offense under this section. If the
48 provisions of this section conflict with those contained in any other
49 law, this section shall control. The certificate of the commissioner to
50 the effect that a tax has not been paid, that a return or declaration of
51 estimated tax has not been filed, or that information has not been
52 supplied, as required by or under the provisions of this chapter, shall
53 be prima facie evidence that such tax has not been paid, that such
54 return or declaration has not been filed, or that such information has
55 not been supplied. All fines levied under this section shall be paid to

1 the commissioner and deposited in the same manner as revenues collected
2 or received under this chapter.

3 § 11-1939 Armed forces relief provisions. (a) Time to be disregarded.
4 In the case of an individual serving in the armed forces of the United
5 States or serving in support of such armed forces, in an area designated
6 by the president of the United States by executive order as a "combat
7 zone" at any time during the period designated by the president by exec-
8 utive order as the period of combatant activities in such zone, or
9 hospitalized outside the state as a result of injury received while
10 serving in such an area during such time, the period of service in such
11 area, plus the period of continuous hospitalization outside the state
12 attributable to such injury, and the next one hundred eighty days there-
13 after, shall be disregarded in determining, under this chapter in
14 respect of the tax liability, including any interest, penalty, or addi-
15 tion to the tax, of such individual:

16 (1) Whether any of the following acts was performed within the time
17 prescribed therefor:

18 (A) filing any return of tax, except withholding tax;

19 (B) payment of any tax, except withholding tax, or any installment
20 thereof or of any other liability to the commissioner, in respect there-
21 of;

22 (C) filing a petition with the commissioner for credit or refund or
23 for redetermination of a deficiency, or application for review of a
24 decision rendered by the commissioner;

25 (D) allowance of a credit or refund of tax;

26 (E) filing a claim for credit or refund of tax;

27 (F) giving or making any notice or demand for the payment of any tax,
28 or with respect to any liability to the commissioner in respect of tax;

29 (G) collection, by the commissioner, by levy or otherwise of the
30 amount of any liability in respect of tax;

31 (H) bringing suit by the city, or any officer, on its behalf, in
32 respect of any liability in respect of tax; and

33 (I) any other act required or permitted under this chapter or speci-
34 fied in the regulations prescribed under this section by the commission-
35 er.

36 (2) The amount of any credit or refund, including interest.

37 (b) Action taken before ascertainment of right to benefits. The
38 collection of the tax imposed by this chapter or of any liability to the
39 commissioner in respect of such tax, or any action or proceeding by or
40 on behalf of the commissioner in connection therewith, may be made,
41 taken, begun, or prosecuted in accordance with law, without regard to
42 the provisions of subdivision (a) of this section, unless prior to such
43 collection, action, or proceeding it is ascertained that the person
44 concerned is entitled to the benefit of subdivision (a) of this section.

45 (c) Members of armed forces dying in action. In the case of any person
46 who dies while in active service as a member of the armed forces of the
47 United States, if such death occurred while serving in a combat zone
48 during a period of combatant activities in such zone, as described in
49 subdivision (a) of this section, or as a result of wounds, disease or
50 injury incurred while so serving, the tax imposed by this chapter shall
51 not apply with respect to the taxable year in which falls the date of
52 his or her death, or with respect to any prior taxable year ending on or
53 after the first day so served in a combat zone, and no returns shall be
54 required in behalf of such person or his or her estate for such year;
55 and the tax for any such taxable year which is unpaid at the date of
56 death, including interest, additions to tax and penalties, if any, shall

1 not be assessed and, if assessed, the assessment shall be abated and, if
2 collected, shall be refunded to the legal representative of such estate
3 if one has been appointed and has qualified, or, if no legal represen-
4 tative has been appointed or has qualified, to the surviving spouse.

5 § 11-1940 General powers of commissioner. (a) General. The commission-
6 er shall administer and enforce the tax imposed by this chapter and the
7 commissioner is authorized to make such rules and regulations, and to
8 require such facts and information to be reported, as the commissioner
9 may deem necessary to enforce the provisions of this chapter and the
10 commissioner may delegate his or her powers and functions under all
11 subchapters of this chapter to one of his or her deputies or to any
12 employee or employees of his or her department.

13 (b) Examination of books and witnesses. The commissioner for the
14 purpose of ascertaining the correctness of any return, or for the
15 purpose of making an estimate of taxable wages and net earnings from
16 self-employment of any person, shall have power to examine or to cause
17 to have examined, by any agent or representative designated by him or
18 her for that purpose, any books, papers, records or memoranda bearing
19 upon the matters required to be included in the return, and may require
20 the attendance of the person rendering the return or any officer or
21 employee of such person, or the attendance of any other person having
22 knowledge in the premises, may take testimony and require proof material
23 for the commissioner's information, with power to administer oaths to
24 such person or persons and may issue commissions for the examination of
25 witnesses who are out of the state or unable to attend before the
26 commissioner or excused from attendance, and for the production of
27 books, papers, records or memoranda.

28 (c) Abatement authority. The commissioner, of his or her own motion,
29 may abate any small unpaid balance of an assessment of tax, or any
30 liability in respect thereof, if the commissioner determines under
31 uniform rules prescribed by him or her that the administration and
32 collection costs involved would not warrant collection of the amount
33 due. The commissioner may also abate, of his or her own motion, the
34 unpaid portion of the assessment of any tax or any liability in respect
35 thereof, which is excessive in amount, or is assessed after the expira-
36 tion of the period of limitation properly applicable thereto, or is
37 erroneously or illegally assessed. No claim for abatement under this
38 subdivision shall be filed by a taxpayer.

39 (d) Special refund authority. Where no questions of fact or law are
40 involved and it appears from the records of the commissioner that any
41 moneys have been erroneously or illegally collected from any taxpayer or
42 other person, or paid by such taxpayer or other person under a mistake
43 of facts, pursuant to the provisions of this chapter, the commissioner
44 at any time, without regard to any period of limitations, shall have the
45 power, upon making a record of his or her reasons therefor in writing,
46 to cause such moneys so paid and being erroneously and illegally held to
47 be refunded.

48 (e) Cooperation with the United States and other states. Notwith-
49 standing the provisions of section 11-1942 of this subchapter, the
50 commissioner may permit the secretary of the treasury of the United
51 States or such secretary's delegates, or the proper tax officer of any
52 other state imposing an income tax upon the income of individuals, or
53 the authorized representative of either such officer, to inspect any
54 return filed under this chapter, or may furnish to such officer or his
55 or her authorized representative an abstract of any such return or
56 supply him or her with information concerning an item contained in any

1 such return, or disclosed by any investigation of tax liability under
2 this chapter, but such permission shall be granted or such information
3 furnished to such officer or his or her representative only if the laws
4 of the United States or of such state, as the case may be, grant
5 substantially similar privileges to the commissioner and such informa-
6 tion is to be used for tax purposes only; and provided further the
7 commissioner may furnish to the commissioner of internal revenue or his
8 or her authorized representative such returns filed under this chapter
9 and other tax information as he or she may consider proper for the use
10 in court actions or proceedings under the internal revenue code, whether
11 civil or criminal, where a written request therefor has been made to the
12 commissioner by the secretary of the treasury of the United States or by
13 his or her delegates, provided the laws of the United States grant
14 substantially similar powers to the secretary of the treasury of the
15 United States or such secretary's delegates. Where the commissioner has
16 so authorized use of returns and other information in such actions or
17 proceedings, officers and employees of the department of taxation and
18 finance may testify in such actions or proceedings in respect to such
19 returns or other information.

20 § 11-1941 Joint enforcement. (1) If there is assessed a tax under this
21 chapter and there is also assessed a tax or taxes against the same
22 taxpayer pursuant to article twenty-two of the tax law and if the
23 commissioner of the tax imposed by this chapter takes action under the
24 tax law with respect to the enforcement and collection of the tax or
25 taxes assessed under such tax law, the commissioner shall, wherever
26 possible, accompany such action with a similar action under similar
27 enforcement and collection provisions of this chapter.

28 (2) Any monies collected as a result of such joint action shall be
29 deemed to have been collected in proportion in the amounts due, includ-
30 ing tax, penalties, interest and additions to tax under article twenty-
31 two of the tax law and under this chapter.

32 (3) Whenever the commissioner takes any action with respect to a defi-
33 ciency of personal income tax, under article twenty-two of the tax law
34 other than the action set forth in subdivision one of this section the
35 commissioner may, in his or her discretion, accompany such action with a
36 similar action under this chapter.

37 § 11-1942 Secrecy requirement and penalties for violation. 1. Except
38 in accordance with proper judicial order or as otherwise provided by
39 law, it shall be unlawful for the commissioner or any other officer or
40 employee of the department of finance of the city, any person engaged or
41 retained by such commissioner or department on an independent contract
42 basis, any depository to which any return may be delivered as provided
43 in subdivision two of this section, any officer or employee of such
44 depository, or any person who, pursuant to this section, is permitted to
45 inspect any report or return or to whom a copy, an abstract or a portion
46 of any report or return is furnished, or to whom any information
47 contained in any report or return is furnished, to divulge or make known
48 in any manner the amount of wages or earnings or any particulars set
49 forth or disclosed in any report or return required under this chapter.
50 The commissioner or any other officer and employee charged with the
51 custody of such reports and returns shall not be required to produce any
52 of them or evidence of anything contained in them in any action or
53 proceeding in any court, except on behalf of the city in an action or
54 proceeding under the provisions of this chapter or in any other action
55 or proceeding involving the collection of a tax due under this chapter
56 to which the city is a party or a claimant, or on behalf of any party to

1 any action or proceeding under the provisions of this chapter when the
2 reports, returns or facts shown thereby are directly involved in such
3 action or proceeding, in any of which events the court may require the
4 production of, and may admit in evidence, so much of said reports,
5 returns or of the facts shown thereby, as are pertinent to the action or
6 proceeding and no more; except as provided in subdivision (e) of section
7 11-1940 of this subchapter. The commissioner may, nevertheless, publish
8 a copy or a summary of any determination or decision rendered after the
9 hearing required under section 11-1931 of this subchapter of this chap-
10 ter. Nothing in this section shall be construed to prohibit the deliv-
11 ery to a taxpayer or the taxpayer's duly authorized representative of a
12 certified copy of any return or report filed in connection with his or
13 her tax or to prohibit the publication of statistics so classified as to
14 prevent the identification of particular reports or returns and the
15 items thereof, or the inspection by the legal representatives of the
16 city of the report or return of any taxpayer who shall bring action to
17 set aside or review the tax based thereon, or against whom an action or
18 proceeding under this chapter has been recommended by the commissioner.
19 Reports and returns shall be preserved for three years and thereafter
20 until the commissioner orders them to be destroyed. Any violation of
21 the provisions of this section shall be punished by a fine not exceeding
22 one thousand dollars or by imprisonment not exceeding one year, or both,
23 at the discretion of the court, and if the offender be the commissioner
24 or any other officer or employee of the city, he or she shall be
25 dismissed from office and be incapable of holding any public office in
26 the city or the state for a period of five years thereafter.

27 2. Notwithstanding the provisions of subdivision one of this section,
28 the commissioner of finance, in his or her discretion, may require or
29 permit any or all individuals, estates or trusts, liable for any tax
30 imposed by this chapter, to make payments on account of estimated tax
31 and payment of any tax, penalty or interest imposed by this chapter to
32 banks, banking houses or trust companies designated by the commissioner
33 of finance and to file declarations of estimated tax and reports and
34 returns with such banks, banking houses or trust companies as agents of
35 the commissioner of finance, in lieu of making any such payment directly
36 to the commissioner of finance. However, the commissioner of finance
37 shall designate only such banks, banking houses or trust companies as
38 are depositories or financial agents of Staten Island.

39 § 11-1943 Provisions not applicable. The provisions contained in this
40 subchapter shall not be applicable with respect to taxes imposed for
41 taxable periods commencing on or after January first, nineteen hundred
42 seventy-six but, with respect to the tax imposed for such periods the
43 provisions contained in part VI of article twenty-two of the tax law and
44 sections six hundred fifty-three, six hundred fifty-eight, six hundred
45 sixty-two and thirteen hundred eleven of the tax law including the
46 provisions of judicial review by a proceeding under article seventy-
47 eight of the civil practice law and rules shall be applicable with the
48 same force and effect as if those provisions had been incorporated in
49 full in this section except where inconsistent with the provisions of
50 this chapter.

51 § 11-1944 Deposit and disposition of revenues by commissioner. All
52 taxes, penalties and interest imposed under this chapter which are paid
53 to or collected by the commissioner of finance shall be deposited by the
54 commissioner of finance in the general fund of the city.

55 § 11-1945 Effect of invalidity in part; inconsistencies with other
56 laws. (a) If any clause, sentence, paragraph, subdivision, section,

1 provision or other portion of this chapter or the application thereof to
2 any person or circumstances shall be held to be invalid, such holding
3 shall not affect, impair or invalidate the remainder of this chapter or
4 the application of such portion held invalid, to any other person or
5 circumstances, but shall be confined in its operation to the clause,
6 sentence, paragraph, subdivision, section, provision or other portion
7 thereof directly involved in such holding or to the person and circum-
8 stances therein involved.

9 (b) If any provision of this chapter is inconsistent with, in conflict
10 with, or contrary to any other provision of law, such provision of this
11 chapter shall prevail over such other provision and such other provision
12 shall be deemed to have been amended, superseded or repealed to the
13 extent of such inconsistency, conflict or contrariety.

14 CHAPTER 20
15 SALES, EXCISE AND RELATED TAXES
16 SUBCHAPTER 1
17 GENERAL SALES AND COMPENSATING USE TAXES

18 § 11-2001 Imposition of general sales and compensating use taxes. (a)
19 There are hereby imposed and there shall be paid all of the sales and
20 compensating use taxes described in article twenty-eight of the tax law
21 as authorized by subdivision (a) of section twelve hundred ten of the
22 tax law, at the rate of four and one-half percent, provided that the
23 taxes described in paragraph six of subdivision (c) of section eleven
24 hundred five of the tax law shall be imposed and paid at the rate of six
25 percent.

26 (b) Notwithstanding any contrary provision of this section or other
27 law, this section: (1) does not impose tax on (i) receipts from the
28 sale of the services of laundering, dry-cleaning, tailoring, weaving,
29 pressing, shoe repairing and shoe shining described in subparagraph (ii)
30 of paragraph three of subdivision (c) of section eleven hundred five of
31 the tax law; (ii) receipts from the sale of services described in para-
32 graph six of subdivision (c) of section eleven hundred five of the tax
33 law at facilities owned and operated by the city or an agency or instru-
34 mentality of the city or a public corporation the majority of whose
35 members are appointed by the mayor or the city council or both of them;
36 (2) for purposes of the tax described in subdivision (e) of section
37 eleven hundred five of the tax law, defines "permanent resident" to mean
38 any occupant of any room or rooms in a hotel for at least one hundred
39 eighty consecutive days with regard to the period of such occupancy; (3)
40 does not omit from the tax described in paragraph one of subdivision (f)
41 of section eleven hundred five of the tax law charges to a patron for
42 admission to, or use of, facilities for sporting activities in which
43 such patron is to be a participant, such as bowling alleys and swimming
44 pools; (4) provides the clothing and footwear exemption in paragraph
45 thirty of subdivision (a) of section eleven hundred fifteen of the tax
46 law; (5) omits the exemption provided in paragraph forty-one of subdivi-
47 sion (a) of section eleven hundred fifteen of the tax law; (6) omits the
48 exemption provided in subdivision (c) of section eleven hundred fifteen
49 of the tax law insofar as it applies to fuel, gas, electricity, refrig-
50 eration and steam, and gas, electric, refrigeration and steam service of
51 whatever nature for use or consumption directly and exclusively in the
52 production of gas, electricity, refrigeration or steam; and (7) omits
53 the provision for refund or credit contained in clause six of subdivi-
54 sion (a) of section eleven hundred nineteen of the tax law.

1 (c) The taxes imposed by this section shall be in addition to any and
2 all other taxes authorized or imposed under any other provision of law.

3 (d) The taxes imposed by this section shall be administered and
4 collected by the state commissioner of taxation and finance as provided
5 in articles twenty-eight and twenty-nine of the tax law.

6 (e) The provisions of articles twenty-eight and twenty-nine of the tax
7 law relating or applicable to the taxes imposed by this section, includ-
8 ing the applicable definitions, transitional provisions, limitations,
9 special provisions, exemptions, exclusions, refunds, credits and admin-
10 istrative provisions, so far as those provisions can be made applicable
11 to the taxes imposed by this section, shall apply to the taxes imposed
12 by this section with the same force and effect as if those provisions
13 had been incorporated in full into this section and had expressly
14 referred to the taxes imposed by this section, except to the extent that
15 any provision of article twenty-eight or twenty-nine of the tax law is
16 either inconsistent with or not relevant to the taxes imposed by this
17 section.

18 (f) Net collections from the taxes imposed by this section paid to
19 this city by the state comptroller shall be credited to and deposited in
20 the general fund of this city, but no part of such revenues may be
21 expended unless appropriated in the annual budget of this city.

22 (g) If any provision of this section or the application thereof shall
23 for any reason be adjudged by any court of competent jurisdiction to be
24 invalid, such judgment shall not affect, impair or invalidate the
25 remainder of this section but shall be confined in its operation to the
26 provision thereof directly involved in the controversy in which such
27 judgment shall have been rendered and the application of such provision
28 to other persons or circumstances shall not be affected thereby.

29 § 11-2002 Imposition of special sales taxes. (a) There are hereby
30 imposed and there shall be paid sales taxes at the rate of four and
31 one-half percent on receipts from every sale of the services of beauty,
32 barbering, hair restoring, manicuring, pedicuring, electrolysis, massage
33 services and similar services, and every sale of services by weight
34 control salons, health salons, gymnasiums, Turkish and sauna bath and
35 similar establishments and every charge for the use of such facilities,
36 whether or not any tangible personal property is transferred in conjunc-
37 tion therewith; but excluding services rendered by a physician, osteo-
38 path, dentist, nurse, physiotherapist, chiropractor, podiatrist, optome-
39 trist, ophthalmic dispenser or a person performing similar services
40 licensed under title eight of the education law, as amended, and exclud-
41 ing such services when performed on pets and other animals, as author-
42 ized by subdivision (a) of section twelve hundred twelve-a of the tax
43 law. Provided, however, that the tax hereby imposed shall not be imposed
44 after November thirtieth, two thousand twenty-six.

45 (b) The taxes imposed by this section shall be in addition to any and
46 all other taxes authorized or imposed under any other provision of law.

47 (c) The taxes imposed by this section shall be administered and
48 collected by the state commissioner of taxation and finance as provided
49 in articles twenty-eight and twenty-nine of the tax law.

50 (d) The provisions of articles twenty-eight and twenty-nine of the tax
51 law relating or applicable to the taxes imposed by this section, includ-
52 ing the applicable definitions, transitional provisions, limitations,
53 special provisions, exemptions, exclusions, refunds, credits and admin-
54 istrative provisions, so far as those provisions can be made applicable
55 to the taxes imposed by this section, shall apply to the taxes imposed
56 by this section with the same force and effect as if those provisions

1 had been incorporated in full into this section and had expressly
 2 referred to the taxes imposed by this section, except to the extent that
 3 any provision of article twenty-eight or twenty-nine of the tax law is
 4 either inconsistent with or not relevant to the taxes imposed by this
 5 section.

6 (e) Net collections from the taxes imposed by this section paid to
 7 this city by the state comptroller shall be credited to and deposited in
 8 the general fund of this city, but no part of such revenues may be
 9 expended unless appropriated in the annual budget of this city.

10 (f) If any provision of this section or the application thereof shall
 11 for any reason be adjudged by any court of competent jurisdiction to be
 12 invalid, such judgment shall not affect, impair or invalidate the
 13 remainder of this section but shall be confined in its operation to the
 14 provision thereof directly involved in the controversy in which such
 15 judgment shall have been rendered and the application of such provision
 16 to other persons or circumstances shall not be affected thereby.

17 § 11-2032 Construction and enforcement. This subchapter shall be
 18 construed and enforced in conformity with articles twenty-eight and
 19 twenty-nine of the tax law of the state of New York pursuant to which
 20 the same is enacted.

21 SUBCHAPTER 3
 22 SALES TAX ON CREDIT SERVICES,
 23 PROTECTIVE AND DETECTIVE SERVICES,
 24 INTERIOR DECORATING AND DESIGNING
 25 SERVICES, AND INTERIOR CLEANING AND MAINTENANCE SERVICES

26 § 11-2039 Definitions. (a) "Person" includes an individual, partner-
 27 ship, society, association, joint-stock company, corporation, estate,
 28 receiver, trustee, assignee, referee, and any other person acting in a
 29 fiduciary or representative capacity, whether appointed by a court or
 30 otherwise, and any combination of the foregoing.

31 (b) When used in this subchapter for the purposes of the taxes imposed
 32 by this subchapter, the following terms shall mean:

33 (1) "Purchaser." A person who purchases property or to whom are
 34 rendered services, the receipts from which are taxable under this
 35 subchapter.

36 (2) "Receipt." The amount of the sale price of any property and the
 37 charge for any service taxable under this subchapter, valued in money,
 38 whether received in money or otherwise, including any amount for which
 39 credit is allowed by the vendor to the purchaser, without any deduction
 40 for expenses or early payment discounts, but excluding any credit for
 41 tangible personal property accepted in part payment and intended for
 42 resale.

43 (3) "Sale." Any transfer of title or possession or both, exchange or
 44 barter, rental, lease or license to use or consume, conditional or
 45 otherwise, in any manner or by any means whatsoever for a consideration,
 46 or any agreement therefor, including the rendering of any service, taxa-
 47 ble under this subchapter, for a consideration or any agreement there-
 48 for.

49 (4) "Vendor." A person making sales of tangible personal property or
 50 services, the receipts from which are taxed by this subchapter.

51 (5) "Tax commission." Tax commission of the state of New York.

52 (6) "Tax law." Tax law of the state of New York.

53 § 11-2040 Imposition of tax. (a) There is hereby imposed within the
 54 city and there shall be paid a tax at the rate of four and one-half

1 percent upon the receipts from every sale, except for resale, of credit
2 rating and credit reporting services, including, but not limited to,
3 those services provided by mercantile and consumer credit rating or
4 reporting bureaus or agencies, whether rendered in written or oral form
5 or in any other manner, except to the extent otherwise taxable under
6 article twenty-eight of the tax law; provided, however, that the tax
7 hereby imposed shall not be imposed after November thirtieth, two thou-
8 sand twenty-six, on receipts from sales of the services specified in
9 this subdivision.

10 (b) Wages, salaries and other compensation paid by an employer to an
11 employee for performing as an employee the services described in subdivi-
12 sion (a) of this section are not receipts subject to the taxes imposed
13 by such subdivision.

14 (c) Any taxes imposed by this subchapter are in addition to any other
15 tax which the city may impose or may be imposing pursuant to any law.

16 § 11-2041 Transitional provisions. The taxes imposed under subdivision
17 (a) of section 11-2040 of this subchapter shall be paid with respect to
18 receipts from all sales of services on or after September first, nine-
19 teen hundred seventy-five although rendered or agreed to be rendered
20 under a prior contract. Where a service is sold on a monthly, quarterly,
21 yearly or other term basis, the charge for such service shall be subject
22 to tax under this subchapter to the extent that such charge is applica-
23 ble to any period on or after September first, nineteen hundred seven-
24 ty-five, and such charge shall be apportioned on the basis of the ratio
25 of the number of days falling within such period to the total number of
26 days in the full term or period.

27 § 11-2042 Exempt organizations. Except as otherwise provided in this
28 section, any sale by or to any of the following shall not be subject to
29 the taxes imposed by this subchapter:

30 (1) The state of New York, or any of its agencies, instrumentalities,
31 public corporations, including a public corporation created pursuant to
32 agreement or compact with another state or Canada, or political subdivi-
33 sions where it is the purchaser, user or consumer, or where it is a
34 vendor of services or property of a kind not ordinarily sold by private
35 persons;

36 (2) The United States of America, and any of its agencies and instru-
37 mentalities, insofar as it is immune from taxation where it is the
38 purchaser, user or consumer, or where it sells services or property of a
39 kind not ordinarily sold by private persons;

40 (3) The United Nations or any international organization of which the
41 United States of America is a member where it is the purchaser, user or
42 consumer, or where it sells services or property of a kind not ordinar-
43 ily sold by private persons;

44 (4) Any corporation, association, trust, or community chest, fund or
45 foundation, organized and operated exclusively for religious, charita-
46 ble, scientific, testing for public safety, literary or educational
47 purposes, or for the prevention of cruelty to children or animals, no
48 part of the net earnings of which inures to the benefit of any private
49 shareholder or individual, no substantial part of the activities of
50 which is carrying on propaganda, or otherwise attempting to influence
51 legislation, and which does not participate in, or intervene in, includ-
52 ing the publishing or distributing of statements any political campaign
53 on behalf of any candidate for public office;

54 (5) A post or organization of war veterans, or an auxiliary unit or
55 society of, or a trust or foundation for, any such post or organization:

56 (A) organized in this state,

1 (B) at least seventy-five percent of the members of which are war
2 veterans and substantially all of the other members of which are indi-
3 viduals who are veterans, but not war veterans, or are cadets, or are
4 spouses, widows or widowers of war veterans or such individuals, and

5 (C) no part of the net earnings of which inures to the benefit of any
6 private shareholder or individual.

7 § 11-2043 Refunds or credits based on proof of certain uses. A refund
8 or credit equal to the amount of the sales or compensating use tax
9 imposed by section eleven hundred seven of the tax law or by section
10 11-2001 of this chapter, as the case may be, and paid on the sale or use
11 of tangible personal property which is later used by such purchaser in
12 performing a service subject to tax under this subchapter shall be
13 allowed such purchaser against the tax imposed by this subchapter and
14 collected by such person on the sale of such services if such property
15 has become a physical component part of the property upon which the
16 service is performed or has been transferred to the purchaser of the
17 service in conjunction with the performance of the service subject to
18 tax; provided, however, that any such refund or credit shall be without
19 interest.

20 § 11-2044 Administration and collection. The taxes imposed by section
21 11-2040 of this subchapter shall be administered and collected by the
22 tax commission in the same manner as the taxes imposed by article twen-
23 ty-eight of the tax law are administered and collected by such commis-
24 sion. All of the provisions of such article relating to or applicable
25 to the administration and collection of the taxes imposed by that arti-
26 cle shall apply to the taxes imposed by this subchapter, including
27 sections eleven hundred one, eleven hundred eleven, and sections eleven
28 hundred thirty-one through eleven hundred forty-seven inclusive, with
29 the same force and effect as if those provisions had been incorporated
30 in full into this subchapter and had expressly referred to the taxes
31 imposed by this subchapter, except as otherwise provided in section
32 twelve hundred fifty of the tax law. For purposes of this subchapter,
33 the term "tax" in part IV of such article twenty-eight of the tax law
34 shall include the taxes imposed by this subchapter.

35 § 11-2045 Deposit and disposition of revenue. (a) The tax commission
36 shall deposit daily to the credit of the comptroller of the state of New
37 York, all taxes, penalties and interest collected under this subchapter
38 in such responsible banks, banking houses or trust companies as may be
39 designated by the comptroller. Such deposits shall be kept in trust for
40 the city and separate and apart from all other monies in the possession
41 of the comptroller. The comptroller shall require adequate security
42 from all such depositories. Of the revenue collected under this subchap-
43 ter the comptroller shall retain in his or her hands such amount as the
44 commissioner of taxation and finance of the state of New York may deter-
45 mine to be necessary for refunds under this subchapter and for reason-
46 able costs of the tax commission in administering, collecting and
47 distributing the taxes under this subchapter, out of which the comp-
48 troller shall pay any refunds made under the provisions of this subchap-
49 ter. The comptroller, after reserving such refund fund and such costs,
50 shall on or before the twelfth day of each month, pay to the commission-
51 er of finance of this city all taxes, interest and penalties collected
52 under this subchapter and remaining to the comptroller's credit in such
53 banks, banking houses or trust companies at the close of business on the
54 last day of the preceding month, provided, however, that the comptroller
55 shall on or before the last day of June and December make a partial
56 payment consisting of the collections made during and including the

1 first twenty-five days of said months to the commissioner of finance of
2 this city. The amount so payable shall be certified to the comptroller
3 by the president of the tax commission or such president's delegate, who
4 shall not be held liable for any inaccuracy in such certificate. Where
5 the amount so paid over in any such distribution is more or less than
6 the amount then due to this city, the amount of the overpayment or
7 underpayment shall be certified to the comptroller by the president of
8 the tax commission or such president's delegate, who shall not be held
9 liable for any inaccuracy in such certificate. The amount of the over-
10 payment shall be so certified to the comptroller as soon after the
11 discovery of the overpayment or underpayment as reasonably possible and
12 subsequent payments and distributions by the comptroller to this city
13 shall be adjusted by subtracting the amount of any such overpayment from
14 or by adding the amount of any such underpayment to such number of
15 subsequent payments and distributions as the comptroller and the presi-
16 dent of the state tax commission shall consider reasonable in view of
17 the amount of the overpayment or underpayment and all other facts and
18 circumstances.

19 (b) All payments to the commissioner of finance pursuant to subdivi-
20 sion (a) of this section shall be credited to and deposited in the
21 general fund of this city, but no part of such revenues may be expended
22 unless appropriated in the annual budget of this city.

23 § 11-2046 Construction and enforcement. This subchapter shall be
24 construed and enforced in conformity with articles twenty-eight and
25 twenty-nine of the tax law of the state of New York pursuant to which it
26 is enacted.

27 § 11-2047 Effective date. This subchapter shall take effect September
28 first, nineteen hundred seventy-five except that certificates of regis-
29 tration may be filed with the state tax commission and certificates of
30 authority to collect tax may be issued by the state tax commission prior
31 to such date.

32 SUBCHAPTER 4
33 ADDITIONAL PARKING TAX

34 § 11-2048 Definitions. (a) "Person" includes an individual, partner-
35 ship, society, association, joint-stock company, corporation, estate,
36 receiver, trustee, assignee, referee, and any other person acting in a
37 fiduciary or representative capacity, whether appointed by a court or
38 otherwise, and any combination of the foregoing.

39 (b) When used in this subchapter for the purpose of the taxes imposed
40 by this subchapter, the following terms shall mean:

41 (1) "Purchaser." A person who purchased property or to whom are
42 rendered services, the receipts from which are taxable under this
43 subchapter.

44 (2) "Receipt." The amount of the sale price of any property and the
45 charge for any service taxable under this subchapter, valued in money,
46 whether received in money or otherwise, including any amount for which
47 credit is allowed by the vendor to the purchaser, without any deduction
48 for expenses or early payment discounts, but excluding any credit for
49 tangible personal property accepted in part payment and intended for
50 resale.

51 (3) "Sale." Any transfer of title or possession or both, exchange or
52 barter, rental, lease or license to use or consume, conditional or
53 otherwise, in any manner or by any means whatsoever for a consideration,
54 or any agreement therefor, including the rendering of any service, taxa-

1 ble under this subchapter, for a consideration or any agreement there-
2 for.

3 (4) "Vendor." A person making sales of tangible personal property or
4 services, the receipts from which are taxed by this subchapter.

5 (5) "Tax commission." Tax commission of the state of New York.

6 (6) "Tax law." Tax law of the state of New York.

7 § 11-2049 Imposition of tax. On and after September first, nineteen
8 hundred eighty, there is hereby imposed within the city of New York, and
9 there shall be paid, a tax at the rate of eight percent on receipts from
10 every sale of the service of providing parking, garaging or storing for
11 motor vehicles by persons operating a garage, other than a garage which
12 is part of premises occupied solely as a private one or two family
13 dwelling, parking lot or other place of business engaged in providing
14 parking, garaging or storing for motor vehicles, in every county within
15 the city of New York with a population density in excess of fifty thou-
16 sand persons per square mile, as determined by reference to the latest
17 federal census; provided, however, that receipts for such services paid
18 to a homeowner's association by its members or receipts paid by members
19 of a homeowner's association to a person leasing the parking facility
20 from the homeowner's association shall not be subject to the tax imposed
21 by this section. For purposes of this section, a homeowner's association
22 is an association, including a cooperative housing or apartment corpo-
23 ration, (i) the membership of which is comprised exclusively of owners
24 or residents of residential dwelling units, including owners of units in
25 a condominium, and including shareholders in a cooperative housing or
26 apartment corporation, where such units are located in a defined
27 geographical area such as a housing development or subdivision; and (ii)
28 which owns or operates a garage, parking lot or other place of business
29 engaged in providing parking, garaging or storing for motor vehicles
30 located in such area for use, whether or not exclusive, by such owners
31 or residents. The tax imposed on the receipts described in this section
32 is in addition to the tax imposed on such receipts under subchapter one
33 of this chapter or section eleven hundred seven of the tax law, as the
34 case may be.

35 § 11-2050 Transitional provisions. The taxes imposed by this subchap-
36 ter shall be paid with respect to receipts from all sales of services on
37 or after September first, nineteen hundred eighty although rendered or
38 agreed to be rendered under a prior contract. Where a service is sold
39 on a monthly, quarterly, yearly or other term basis, the charge for such
40 service shall be subject to tax under this subchapter to the extent that
41 such charge is applicable to any period on or after September first,
42 nineteen hundred eighty, and such charge shall be apportioned on the
43 basis of the ratio of the number of days falling within such period to
44 the total number of days in the full term or period.

45 § 11-2051 Exempt organizations and individuals. (a) Except as other-
46 wise provided in this section, any sale by or to any of the following
47 shall not be subject to the taxes imposed by this subchapter:

48 (1) The state of New York, or any of its agencies, instrumentalities,
49 public corporations, including a public corporation created pursuant to
50 agreement or compact with another state or Canada, or political subdivi-
51 sions where it is the purchaser, user or consumer, or where it is a
52 vendor of services of a kind not ordinarily sold by private persons;

53 (2) The United States of America, and any of its agencies and instru-
54 mentalities, insofar as it is immune from taxation where it is the
55 purchaser, user or consumer or where it sells services of a kind not
56 ordinarily sold by private persons;

1 (3) The United Nations or any international organization of which the
2 United States of America is a member where it is the purchaser, user or
3 consumer, or where it sells services of a kind not ordinarily sold by
4 private persons;

5 (4) Any corporation, association, trust, or community chest, fund or
6 foundation, organized and operated exclusively for religious, charita-
7 ble, scientific, testing for public safety, literary or educational
8 purposes, or to foster national or international amateur sports competi-
9 tion, but only if no part of its activities involve the provision of
10 athletic facilities or equipment, or for the prevention of cruelty to
11 children or animals, no part of the net earnings of which inures to the
12 benefit of any private shareholder or individual, no substantial part of
13 the activities of which is carrying on propaganda, or otherwise attempt-
14 ing to influence legislation, except as otherwise provided in subsection
15 (h) of section five hundred one of the United States internal revenue
16 code of nineteen hundred fifty-four, as amended, and which does not
17 participate in, or intervene in, including the publishing or distribut-
18 ing of statements, any political campaign on behalf of any candidate for
19 public office;

20 (5) A post or organization of past or present members of the armed
21 forces of the United States, or an auxiliary unit or society of, or a
22 trust or foundation for, any such post or organization:

23 (A) organized in this state,

24 (B) at least seventy-five percent of the members of which are past or
25 present members of the armed forces of the United States and substan-
26 tially all of the other members of which are individuals who are cadets
27 or are spouses, widows or widowers of past or present members of the
28 armed forces of the United States or of cadets, and

29 (C) no part of the net earnings of which inures to the benefit of any
30 private shareholder or individual;

31 (6) The following Indian nations or tribes residing in New York state:
32 Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shin-
33 necock, Tonawanda and Tuscarora, where it is the purchaser, user or
34 consumer;

35 (7) A not-for-profit corporation operating as a health maintenance
36 organization subject to the provisions of article forty-four of the
37 public health law; and

38 (8) Cooperative and foreign corporations doing business in this state
39 pursuant to the rural electric cooperative law.

40 (b) Nothing in this section shall exempt sales of the service of
41 providing parking, garaging or storing for motor vehicles by an organ-
42 ization described in paragraph four or paragraph five of subdivision (a)
43 of this section operating a garage, other than a garage which is part of
44 premises occupied solely as a private one-family or two-family dwelling,
45 parking lot or other place of business engaged in providing parking,
46 garaging or storing for motor vehicles.

47 (c) (1) For purposes of paragraph four of subdivision (a) of this
48 section, in the case of a qualified amateur sports organization (A) the
49 requirement of such paragraph that no part of its activities involve the
50 provision of athletic facilities or equipment shall not apply, and (B)
51 such organization shall not fail to meet the requirement of such para-
52 graph merely because its membership is local or regional in nature.

53 (2) For purposes of this subdivision, the term "qualified amateur
54 sports organization" means any organization organized and operated
55 exclusively to foster national or international amateur sports competi-
56 tion if such organization is also organized and operated primarily to

1 conduct national or international competition in sports or to support
2 and develop amateur athletes for national or international competition
3 in sports.

4 (d) The tax imposed by this subchapter shall not apply to any sale of
5 services to an individual resident of the county in which such tax is
6 imposed when such services are rendered on a monthly or longer-term
7 basis at the principal location for the parking, garaging or storing of
8 a motor vehicle owned or leased, but only in the case of a lease for a
9 term of one year or more, by such individual resident. For purposes of
10 this subdivision, the term "individual resident" means a natural person
11 who maintains in such county a permanent place of abode which is such
12 person's primary residence; the term "motor vehicle" means a motor vehi-
13 cle which is registered pursuant to the vehicle and traffic law at the
14 address of the primary residence referred to in this subdivision, or
15 which is registered pursuant to the vehicle and traffic law and leased
16 to an individual resident at the address of the primary residence
17 referred to in this subdivision, and which is not used in carrying on
18 any trade, business or commercial activity; and the term "lease for a
19 term of one year or more" shall not include any lease the term of which
20 is less than one year, irrespective of the fact that the cumulative
21 period for which such lease may be in effect is one year or more as the
22 result of the right to exercise an option to renew or other like
23 provision.

24 § 11-2052 Administration and collection; penalties; refunds. (a) The
25 taxes imposed by this subchapter shall be administered and collected by
26 the tax commission in the same manner as the taxes imposed by article
27 twenty-eight of the tax law are administered and collected by such
28 commission. All of the provisions of such article relating to or appli-
29 cable to the administration and collection of the taxes imposed by that
30 article shall apply to the taxes imposed by this subchapter, including
31 section eleven hundred one and sections eleven hundred thirty-one
32 through eleven hundred forty-seven inclusive, with the same force and
33 effect as if those provisions had been incorporated in full into this
34 subchapter and had expressly referred to the taxes imposed by this
35 subchapter, except to the extent that any provisions of such article
36 twenty-eight are either inconsistent with a provision of this subchap-
37 ter, or of article twenty-nine of the tax law, or are not relevant to
38 this subchapter or to article twenty-nine of the tax law. For purposes
39 of this subchapter, the term "tax" in part IV of such article twenty-
40 eight of the tax law shall include the taxes imposed by this subchapter.

41 (b) Notwithstanding subdivision (a) of this section or any other
42 provision of law to the contrary, the tax commission shall, subject to
43 such terms and conditions as it may consider necessary, delegate to the
44 commissioner of finance the power and authority to develop and adminis-
45 ter reasonable and necessary procedures, including the use of exemption
46 certificates for presentation to vendors, for determining entitlement to
47 exemption from tax under subdivision (d) of section 11-2051 of this
48 subchapter, and to prescribe, subject to the approval of the tax commis-
49 sion, rules and regulations necessary and appropriate in carrying out
50 such responsibilities.

51 (c) Any person who, in violation of any provision of subdivision (d)
52 of section 11-2051 of this subchapter or any rule or regulation promul-
53 gated thereunder, obtains or uses a certificate of exemption relating to
54 the exemption allowed by such subdivision, shall, if such violation was
55 due to negligence or intentional disregard of such provision or rule or
56 regulation, but without intent to defraud, be liable for a penalty of

1 not more than one hundred dollars for each such violation, and, if such
2 violation was due to fraud, be liable for a penalty of not more than
3 five hundred dollars for each such violation. The commissioner of
4 finance shall have the power, in his or her discretion, to waive, reduce
5 or compromise any penalty imposed pursuant to this subdivision. The
6 penalties authorized by this subdivision shall be in addition to any
7 penalty provided by section eleven hundred forty-five of the tax law,
8 and shall be paid and disposed of, and, if unpaid, shall be determined,
9 assessed, collected and enforced, in the same manner as the taxes
10 imposed by this subchapter.

11 (d) Notwithstanding subdivision (d) of section 11-2051 of this
12 subchapter, section eleven hundred thirty-nine of the tax law or any
13 other provision of law to the contrary, an individual resident shall not
14 be entitled to a refund or credit with respect to any amount of tax
15 which was paid to a vendor prior to the date such individual resident
16 presented to the vendor a valid certificate of exemption from such tax.

17 § 11-2053 Deposit and disposition of revenue. (a) The tax commission
18 shall deposit daily to the credit of the comptroller of the state of New
19 York, all taxes, penalties and interest collected under this subchapter
20 in such responsible banks, banking houses or trust companies as may be
21 designated by the comptroller. Such deposits shall be kept in trust for
22 the city and separate and apart from all other monies in the possession
23 of the comptroller. The comptroller shall require adequate security
24 from all such depositories. Of the revenue collected under this
25 subchapter the comptroller shall retain in his or her hands such amount
26 as the commissioner of taxation and finance of the state of New York may
27 determine to be necessary for refunds under this subchapter and for
28 reasonable costs of the tax commission in administering, collecting and
29 distributing the taxes under this subchapter, out of which the comp-
30 troller shall pay any refunds made under the provisions of this subchap-
31 ter. The comptroller, after reserving such refund fund and such costs
32 shall, on or before the twelfth day of each month, pay to the commis-
33 sioner of finance of this city all taxes, interest and penalties
34 collected under this subchapter during the next preceding calendar month
35 and remaining to the comptroller's credit in such banks, banking houses
36 or trust companies at the close of business on the last day of such
37 preceding month, provided, however, that the comptroller shall on or
38 before the last day of June and December make a partial payment consist-
39 ing of the collections made during and including the first twenty-five
40 days of said months to the commissioner of finance of this city. The
41 amount so payable shall be certified to the comptroller by the president
42 of the tax commission or such president's delegate, who shall not be
43 held liable for any inaccuracy in such certificate. Provided, however,
44 any such certification may be based on such information as may be avail-
45 able to the tax commission at the time such certificate must be made
46 under this section and may be estimated on the basis of percentages or
47 other indices calculated from distributions for prior periods. Where the
48 amount so paid over in any such distribution is more or less than the
49 amount then due to this city, the amount of the overpayment or underpay-
50 ment shall be certified to the comptroller by the president of the tax
51 commission or such president's delegate, who shall not be held liable
52 for any inaccuracy in such certificate. The amount of the overpayment or
53 underpayment shall be so certified to the comptroller as soon after the
54 discovery of the overpayment or underpayment as reasonably possible and
55 subsequent payments and distributions by the comptroller to this city
56 shall be adjusted by subtracting the amount of any such overpayment from

1 or by adding the amount of any such underpayment to such number of
2 subsequent payments and distributions as the comptroller and the presi-
3 dent of the tax commission shall consider reasonable in view of the
4 amount of the overpayment or underpayment and all other facts and
5 circumstances.

6 (b) All payments to the commissioner of finance pursuant to subdivi-
7 sion (a) of this section shall be credited to and deposited in the
8 general fund of this city.

9 § 11-2054 Construction and enforcement. This subchapter shall be
10 construed and enforced in conformity with articles twenty-eight and
11 twenty-nine of the tax law of the state of New York pursuant to which it
12 is enacted.

13 SUBCHAPTER 5
14 TAX ON BEER AND LIQUOR

15 § 11-2055 Definitions. When used in this subchapter the following
16 terms shall mean or include:

17 1. "Person." An individual, partnership, society, association,
18 corporation, joint-stock company, and any combination of individuals,
19 and also an executor, administrator, receiver, trustee or other fiduci-
20 ary.

21 2. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or spirit of
22 wine, from whatever source or by whatever process produced.

23 3. "Beers." All alcoholic beer, lager beer, ale, porter, and stout,
24 and all other fermented beverages of any name or description manufac-
25 tured from malt, wholly or in part, or from any substitute therefor
26 containing one-half of one per centum, or more, of alcohol by volume.

27 4. "Liquors." Any and all distilled or rectified spirits, alcohol,
28 brandy, cordial, whether the base therefor be wine or liquor, whiskey,
29 rum, gin and all other distilled beverages containing alcohol, including
30 all dilutions and mixtures of one or more of such liquids, including any
31 alcoholic liquids which would be wines if the alcoholic content thereof
32 were not more than twenty-four per centum by volume. Such term shall not
33 include liquors containing not more than twenty-four per centum of alco-
34 hol by volume.

35 5. "Alcoholic beverages." Beer or liquors.

36 6. "Distributor." Any person who imports or causes to be imported into
37 this city any alcoholic beverages which are or will be offered for sale
38 or used for any commercial purpose; any purchaser of warehouse receipts
39 for alcoholic beverages stored in a warehouse in this city who causes
40 such beverages to be removed from such warehouse; and also any person
41 who produces, distills, manufactures, brews, compounds, mixes or
42 ferments any alcoholic beverages within this city for sale, except: (a)
43 a person who manufactures, mixes or compounds alcoholic beverages the
44 ingredients of which consist only of alcoholic beverages on which the
45 taxes imposed by this subchapter have been paid, and (b) a person who
46 mixes or compounds alcoholic beverages with non-alcoholic ingredients
47 for sale and immediate consumption on the premises, who shall be a
48 distributor only with respect to the ingredients which consist of alco-
49 holic beverages upon which the taxes imposed by this subchapter have not
50 been paid.

51 7. "Noncommercial importer." A person other than a distributor who
52 imports or causes to be imported into this city alcoholic beverages,
53 except that such person shall not be a noncommercial importer where he
54 or she imports or causes to be imported into this city alcoholic bever-

1 ages in the quantities and under the conditions provided by subdivision
2 (e) of section 11-2056 of this subchapter.

3 8. "Sale." Any transfer, exchange or barter in any manner or by any
4 means whatsoever. The sale of warehouse receipts given upon the storage
5 of alcoholic beverages shall not be construed as a sale of the beverages
6 represented by such receipts.

7 9. "Use." Any compounding or mixing of alcoholic beverages with other
8 ingredients or other treatment of the same in such manner as to render
9 them unfit or unsuitable for consumption as a beverage and also the
10 actual consumption or possession for consumption of alcoholic beverages
11 as a beverage or otherwise.

12 10. "Gallon." One hundred twenty-eight fluid ounces; "quart" means
13 thirty-two fluid ounces.

14 11. "Liter." A metric unit of capacity equal to one thousand cubic
15 centimeters of alcoholic beverages and equivalent to thirty-three and
16 eight hundred fourteen thousandths fluid ounces.

17 12. "City." The city of Staten Island.

18 13. "Commissioner of finance." Commissioner of finance of the city.

19 14. "Tax commission." The tax commission of the state of New York.

20 15. Unless a different meaning is clearly required, any term used in
21 this subchapter shall have the same meaning as when used in a comparable
22 context in the laws of the state of New York relating to taxes on alco-
23 holic beverages.

24 § 11-2056 Imposition of tax. (a) There are hereby imposed on a
25 distributor and a noncommercial importer excise taxes at the following
26 rates:

27 (1) twelve cents per gallon upon beers; and

28 (2) twenty-six and four-tenths cents per liter upon liquors, when sold
29 or used within this city, except when sold or used under such circum-
30 stances that this city is without power to impose such tax or when sold
31 to the United States, and except beers when sold to or by a voluntary
32 unincorporated organization of the armed forces of the United States
33 operating a place for the sale of goods pursuant to regulations promul-
34 gated by the appropriate executive agency of the United States, and
35 except when sold to professional foreign consuls-general, consuls and
36 vice-consuls who are nationals of the state appointing them and who are
37 assigned to foreign consulates in this city provided that American
38 consular officers of equal rank who are citizens of the United States
39 and who exercise their official functions at American consulates in such
40 foreign country are granted reciprocal exemptions; provided, however,
41 that the tax commission may permit the sale of alcohol without tax to a
42 holder of any industrial alcohol permit, alcohol permit or alcohol
43 distributor's permit, issued by the state liquor authority, and by the
44 holder of an alcohol distributor's permit, class A, issued by such
45 authority to a holder of a distiller's license, class B, or a winery
46 license, issued by such authority and may also permit the use of alcohol
47 for any purpose other than the production of alcoholic beverages by such
48 holders without tax.

49 Notwithstanding any other provision of this subchapter, the tax
50 commission may permit the purchase of liquors without tax by a holder of
51 a distiller's license issued by the state liquor authority from another
52 holder of a distiller's license by such authority, in which event the
53 liquors so purchased shall be subject to the tax imposed by this
54 subchapter in the hands of the purchaser in the same manner and to the
55 same extent as if such purchaser had imported or caused the same to be

1 imported into this city or had produced, distilled, manufactured,
2 brewed, compounded, mixed or fermented the same within this city.

3 (b) There is also imposed on each person, other than a distributor
4 within the meaning of this subchapter, who, on August first, nineteen
5 hundred eighty, owns and possesses for the purposes of sale beers or
6 liquors, a floor tax at the rates applicable under subdivision (a) upon
7 such beer in excess of one hundred gallons and upon such liquor in
8 excess of four hundred liters. Such floor tax shall be due and payable
9 on the twentieth day of the month succeeding the month of August, nine-
10 teen hundred eighty.

11 (c) If, prior to August first, nineteen hundred eighty, a contract of
12 sale of alcoholic beverages was made, and delivery thereof pursuant to
13 such contract is made within this city on or after August first, nine-
14 teen hundred eighty, the vendor shall be deemed a distributor for the
15 purposes of this subchapter, and such alcoholic beverages shall be
16 deemed to be sold, and shall be subject to such taxes, at the time of
17 such delivery.

18 (d) In any case where the quantity of alcoholic beverages taxable
19 pursuant to this subchapter is a fractional part of one liter, or one
20 gallon in the case of beers, or an amount greater than a whole multiple
21 of liters, or gallons in the case of beers, the amount of tax levied and
22 imposed on such fractional part of one liter, or one gallon in the case
23 of beers, or fractional part of a liter, or gallon, in excess of a whole
24 multiple of liters or gallons shall be such fractional part of the rate
25 imposed by subdivisions (a) and (b) of this section.

26 (e) Notwithstanding any other provisions of this subchapter, there
27 shall be exempt from the taxes imposed under this subchapter, per month,
28 one quart of alcoholic beverages, or one gallon of such beverages in the
29 case of a person arriving directly from American Samoa, Guam or the
30 Virgin Islands of the United States not more than one quart of which
31 shall have been acquired elsewhere than in such insular possessions:

32 (1) purchased outside this city as an incident to a journey from which
33 the purchaser is returning and

34 (2) not to be offered for sale or used for any commercial purpose,
35 provided such alcoholic beverages accompany such person on his or her
36 return to this city and provided, further, that in the case of a person
37 arriving in this city from other than a state of the United States,
38 including the District of Columbia, the Virgin Islands of the United
39 States or a contiguous country maintaining a free zone or free port,
40 such person shall have remained beyond the territorial limits of the
41 United States for a period of not less than forty-eight hours.

42 Provided, however, where the amounts purchased outside the city or
43 brought in exceed the amounts specified in this subdivision but are not
44 in excess of one liter in the case of the references to one quart or
45 four liters in the case of the reference to one gallon, and where no
46 duty is required by the laws of the United States to be paid on such
47 amounts, such metric standards of fill shall be substituted for one
48 quart and one gallon, respectively, and such amounts shall be exempt
49 from tax under the conditions provided for in this subdivision.

50 § 11-2057 Manner of administration and collection. All the provisions
51 of article eighteen of the tax law shall apply to the taxes imposed by
52 subdivision (a) of section 11-2056 of this subchapter, and the
53 provisions of sections four hundred twenty, four hundred twenty-six,
54 four hundred twenty-nine through four hundred thirty-four, four hundred
55 thirty-six and four hundred thirty-seven of the tax law shall apply to
56 the tax imposed by subdivision (b) of section 11-2056 of this subchap-

1 ter, so far as such sections can be made applicable to the taxes imposed
2 by this subchapter with such limitations as set forth in section four
3 hundred forty-five of the tax law and such modifications as may be
4 necessary in order to adapt such language to the taxes imposed by this
5 subchapter.

6 § 11-2058 State tax commission; administration. The taxes imposed by
7 this subchapter shall be administered and collected by the tax commis-
8 sion in the same manner as the taxes imposed under sections four hundred
9 twenty-four and four hundred twenty-five of the tax law subject to all
10 provisions of that article as may be applicable. The tax commission may
11 make such provisions as it deems necessary for the joint administration
12 and collection of the state and local taxes imposed and authorized by
13 article eighteen of the tax law and this subchapter. Nothing in such
14 article eighteen or this subchapter which requires payment of both state
15 and local taxes to the tax commission shall be construed as the payment
16 of either tax more than once.

17 § 11-2059 Disposition of revenues. All taxes, penalties and interest
18 imposed by this subchapter, which are collected by the tax commission,
19 shall be deposited daily with such responsible banks, banking houses or
20 trust companies, as may be designated by the state comptroller, to the
21 credit of the comptroller, in trust for this city. Such deposits shall
22 be kept in trust and separate and apart from all other monies in the
23 possession of the comptroller. The comptroller shall require adequate
24 security from all such depositories of such revenues collected by the
25 tax commission. The comptroller shall retain in his or her hands such
26 amount as the commissioner of taxation and finance may determine to be
27 necessary for refunds in respect of the taxes imposed by this subchap-
28 ter, and for reasonable costs of the state tax commission in administer-
29 ing, collecting and distributing such taxes, out of which the comp-
30 troller shall pay any refunds of such taxes to which taxpayers shall be
31 entitled under the provisions of this subchapter. The comptroller, after
32 reserving such refund and such costs shall, on or before the twelfth day
33 of each month, pay to the commissioner of finance the taxes, penalties
34 and interest imposed by this subchapter, collected by the state tax
35 commission pursuant to this subchapter during the next preceding calen-
36 dar month. The amount so payable shall be certified to the comptroller
37 by the president of the state tax commission or his or her delegate, who
38 shall not be held liable for any inaccuracy in such certificate. Where
39 the amount so paid over to the city in any such distribution is more or
40 less than the amount then due to the city, the amount of the overpayment
41 or underpayment shall be certified to the comptroller by the president
42 of the state tax commission or his or her delegate, who shall not be
43 held liable for any inaccuracy in such certificate. The amount of the
44 overpayment or underpayment shall be so certified to the comptroller as
45 soon after the discovery of the overpayment or underpayment as reason-
46 ably possible and subsequent payments and distributions by the comp-
47 troller to the city shall be adjusted by subtracting the amount of any
48 such overpayment from or by adding the amount of any such underpayment
49 to such number of subsequent payments and distributions as the comp-
50 troller and the president of the state tax commission shall consider
51 reasonable in view of the amount of the overpayment or underpayment and
52 all other facts or circumstances.

53 § 11-2060 Construction. This subchapter shall be construed and
54 enforced in conformity with section four hundred forty-five of the tax
55 law, pursuant to which it is enacted.

CHAPTER 21
REAL PROPERTY TAX

§ 11-2101 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Deed." Any document or writing, other than a will, regardless of where made, executed or delivered, whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed, including any such document or writing whereby any leasehold interest in real property is granted, assigned or surrendered.

3. "Instrument." Any document or writing, other than a deed or a will, regardless of where made, executed or delivered, whereby any economic interest in real property is transferred.

4. "Transaction." Any act or acts, regardless of where performed, and whether or not reduced to writing, unless evidenced by a deed or instrument, whereby any economic interest in real property is transferred, other than a transfer pursuant to the laws of intestate succession.

5. "Real property." Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, which are located in whole or in part within the city of Staten Island. It shall not include a mortgage, a release of mortgage or, for purposes of paragraph three and subparagraphs (ii) and (iii) of paragraph seven of subdivision a of section 11-2102 of this chapter, a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other. It shall not include rights to sepulture.

6. "Economic interest in real property." The ownership of shares of stock in a corporation which owns real property; the ownership of an interest or interests in a partnership, association or other unincorporated entity which owns real property; and the ownership of a beneficial interest or interests in a trust which owns real property.

7. "Transfer" or "transferred." When used in relation to an economic interest in real property, the terms "transfer" or "transferred" shall include the transfer or transfers or issuance of shares of stock in a corporation, interest or interests in a partnership, association or other unincorporated entity, or beneficial interest in a trust, whether made by one or several persons, or in one or several related transactions, which shares of stock or interest or interests constitute a controlling interest in such corporation, partnership, association, trust or other entity.

8. "Controlling interest." In the case of a corporation, fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the total fair market value of all classes of stock of such corporation; and, in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

1 9. "Consideration." The price actually paid or required to be paid for
2 the real property or economic interest therein, without deduction for
3 mortgages, liens or encumbrances, whether or not expressed in the deed
4 or instrument and whether paid or required to be paid by money, proper-
5 ty, or any other thing of value. It shall include the cancellation or
6 discharge of an indebtedness or obligation. It shall also include the
7 amount of any mortgage, lien or other encumbrance, whether or not the
8 underlying indebtedness is assumed.

9 10. "Net consideration." Any consideration, exclusive of any mortgage
10 or other lien or encumbrance on the real property or interest therein
11 which existed before the delivery of the deed and remains thereon after
12 the delivery of the deed.

13 11. "Comptroller." The comptroller of the city of Staten Island.

14 12. "Commissioner of finance." The commissioner of finance of the city
15 of Staten Island.

16 13. "City." The city of Staten Island.

17 14. "Grantor." The person or persons making, executing or delivering
18 the deed. The term "grantor" also includes the entity with an interest
19 in real property or the person or persons who transfer an economic
20 interest in real property.

21 15. "Grantee." The person or persons accepting the deed or who obtain
22 any of the real property which is the subject of the deed or any inter-
23 est therein. The term "grantee" also includes the person or persons to
24 whom an economic interest in real property is transferred.

25 16. "Affixed." Includes attached or annexed by adhesion, stapling or
26 otherwise, or a notation by stamp, imprint or writing.

27 17. "Register." Includes the city register and the county clerk of the
28 county of Richmond.

29 18. "Tax appeals tribunal." The tax appeals tribunal established by
30 section one hundred sixty-eight of the charter of the preceding munici-
31 pality as it existed January first, nineteen hundred ninety-four.

32 § 11-2102 Imposition of tax. a. A tax is hereby imposed on each deed
33 at the time of delivery by a grantor to a grantee when the consideration
34 for the real property and any improvement thereon, whether or not
35 included in the same deed, exceeds twenty-five thousand dollars. The tax
36 shall be:

37 (1) at the rate of one-half of one per centum of the net consideration
38 with respect to conveyances made before July first, nineteen hundred
39 seventy-one, or made in performance of a contract therefor executed
40 before such date;

41 (2) at the rate of one percent of such net consideration with respect
42 to

43 (i) all conveyance made on or after July first, nineteen hundred
44 seventy-one and before February first, nineteen hundred eighty-two, or
45 made in performance of a contract therefor executed during such period;

46 (ii) conveyances made on or after February first, nineteen hundred
47 eighty-two and before July first, nineteen hundred eighty-two of one,
48 two or three-family houses and individual residential condominium units,
49 and

50 (iii) conveyances made on or after February first, nineteen hundred
51 eighty-two and before July first, nineteen hundred eighty-two where the
52 consideration is less than five hundred thousand dollars, other than
53 grants, assignments or surrenders of leasehold interests in real proper-
54 ty taxable under paragraph three of this subdivision;

55 (3) at the rate of one percent of the consideration with respect to
56 grants, assignments or surrenders of leasehold interests in real proper-

1 ty made on or after February first, nineteen hundred eighty-two and
2 before July first, nineteen hundred eighty-two where the consideration
3 is five hundred thousand dollars or more, provided however, that for
4 purposes of this paragraph the amount subject to tax in the case of a
5 grant of a leasehold interest in real property shall be only such amount
6 as is not considered rent for purposes of the tax imposed by chapter
7 seven of this title;

8 (4) at the rate of two percent of the consideration with respect to
9 all other conveyances made on or after February first, nineteen hundred
10 eighty-two and before July first, nineteen hundred eighty-two, except
11 that, for purposes of this paragraph, where the consideration includes
12 the amount of any mortgage or other lien or encumbrance on the real
13 property or interest therein which existed before the delivery of the
14 deed and remains thereon after the delivery of the deed, the portion of
15 the consideration ascribable to such mortgage, lien or encumbrance shall
16 be taxed at the rate of one percent, and only the balance of such
17 consideration shall be taxed at the rate of two percent;

18 (5) at the rate of one percent of the consideration with respect to
19 conveyances made on or after July first, nineteen hundred eighty-two and
20 before August first, nineteen hundred eighty-nine of one, two or three-
21 family houses and individual residential condominium units;

22 (6) at the rate of one percent of the consideration with respect to
23 conveyances made on or after July first, nineteen hundred eighty-two and
24 before August first, nineteen hundred eighty-nine where the consider-
25 ation is less than five hundred thousand dollars, other than grants,
26 assignments or surrenders of leasehold interests in real property taxa-
27 ble as hereafter provided;

28 (7) (i) at the rate of one percent of the consideration with respect
29 to a grant, assignment or surrender, made on or after July first, nine-
30 teen hundred eighty-two and before August first, nineteen hundred eight-
31 y-nine, of a leasehold interest in a one, two or three-family house or
32 an individual dwelling unit in a dwelling which is to be occupied or is
33 occupied as the residence or home of four or more families living inde-
34 pendently of each other,

35 (ii) at the rate of one percent of the consideration with respect to
36 grants, assignments or surrenders of leasehold interests in real proper-
37 ty made on or after July first, nineteen hundred eighty-two and before
38 August first, nineteen hundred eighty-nine where the consideration is
39 less than five hundred thousand dollars, or

40 (iii) at the rate of two percent of the consideration with respect to
41 grants, assignments or surrenders of leasehold interests in real proper-
42 ty made on or after July first, nineteen hundred eighty-two and before
43 August first, nineteen hundred eighty-nine where the consideration is
44 five hundred thousand dollars or more;

45 (iv) provided, however, that for purposes of subparagraphs (i), (ii)
46 and (iii) of this paragraph, the amount subject to tax in the case of a
47 grant of a leasehold interest shall be only such amount as is not
48 considered rent for purposes of the tax imposed by chapter seven of this
49 title; and

50 (8) at the rate of two percent of the consideration with respect to
51 all other conveyances made on or after July first, nineteen hundred
52 eighty-two and before August first, nineteen hundred eighty-nine;

53 (9) with respect to conveyances made on or after August first, nine-
54 teen hundred eighty-nine, other than grants, assignments or surrenders
55 of leasehold interests in real property taxable as provided in paragraph
56 ten of this subdivision, the tax shall be at the following rates:

1 (i) at the rate of one percent of the consideration for conveyances of
2 one, two or three-family houses and individual residential condominium
3 units where the consideration is five hundred thousand dollars or less,
4 and at the rate of one and four hundred twenty-five thousandths of one
5 percent of the consideration for such conveyances where the consider-
6 ation is more than five hundred thousand dollars, and

7 (ii) at the rate of one and four hundred twenty-five thousandths of
8 one percent of the consideration with respect to all other conveyances
9 where the consideration is five hundred thousand dollars or less, and at
10 the rate of two and six hundred twenty-five thousandths of one percent
11 where the consideration for such conveyances is more than five hundred
12 thousand dollars;

13 (10) With respect to a grant, assignment or surrender of a leasehold
14 interest in real property made on or after August first, nineteen
15 hundred eighty-nine, the tax shall be at the following rates:

16 (i) at the rate of one percent of the consideration for the granting,
17 assignment or surrender of a leasehold interest in a one, two or three-
18 family house or an individual dwelling unit in a dwelling which is to be
19 occupied or is occupied as the residence or home of four or more fami-
20 lies living independently of each other where the consideration is five
21 hundred thousand dollars or less, and at the rate of one and four
22 hundred twenty-five thousandths of one percent of the consideration
23 where the consideration for granting, assignment or surrender or such
24 leasehold interest is more than five hundred thousand dollars; and

25 (ii) at the rate of one and four hundred twenty-five thousandths of
26 one percent of the consideration for the granting, assignment or surren-
27 der of a leasehold interest in all other real property where the consid-
28 eration is five hundred thousand dollars or less, and at the rate of two
29 and six hundred twenty-five thousandths of one percent of the consider-
30 ation where the consideration for the granting, assignment or surrender
31 of such a leasehold interest is more than five hundred thousand dollars;
32 and

33 (iii) provided, however, that for purposes of subparagraphs (i) and
34 (ii) of this paragraph, the amount subject to tax in the case of a grant
35 of a leasehold interest shall be only such amount as is not considered
36 rent for purposes of the tax imposed by chapter seven of this title.

37 Where any real property is situated partly within and partly without
38 the boundaries of the city of Staten Island the consideration and net
39 consideration subject to tax shall be such part of the total consider-
40 ation and total net consideration attributable to that portion of such
41 real property situated within the city of Staten Island or to the inter-
42 est in such portion.

43 b. (1) In addition to the taxes imposed by subdivision a of this
44 section, there is hereby imposed a tax on each instrument or trans-
45 action, unless evidenced by a deed subject to tax under subdivision a of
46 this section, at the time of the transfer, whereby any economic interest
47 in real property is transferred by a grantor to a grantee, where the
48 consideration exceeds twenty-five thousand dollars.

49 (A) With respect to such transfers made on or after July thirteenth,
50 nineteen hundred eighty-six and before August first, nineteen hundred
51 eighty-nine, the tax shall be (i) at the rate of one percent of the
52 consideration where the real property the economic interest in which is
53 transferred is a one, two or three-family house, an individual cooper-
54 ative apartment, an individual residential condominium unit or an indi-
55 vidual dwelling unit in a dwelling which is to be occupied or is occu-
56 pied as the residence or home of four or more families living

1 independently of each other, or where the consideration for the transfer
2 is less than five hundred thousand dollars, and (ii) at the rate of two
3 percent of the consideration with respect to all other transfers.

4 (B) With respect to such transfers made on or after August first,
5 nineteen hundred eighty-nine, the tax shall be at the following rates:

6 (i) at the rate of one percent of the consideration where the real
7 property, the economic interest in which is transferred, is a one, two
8 or three-family house, an individual cooperative apartment, an individ-
9 ual residential condominium unit or an individual dwelling unit in a
10 dwelling which is to be occupied or is occupied as the residence or home
11 of four or more families living independently of each other and where
12 the consideration for such transfer of an economic interest in such real
13 property is five hundred thousand dollars or less, and at the rate of
14 one and four hundred twenty-five thousandths of one percent of the
15 consideration where the consideration for such transfer of an economic
16 interest in such property is more than five hundred thousand dollars,
17 and

18 (ii) at the rate of one and four hundred twenty-five thousandths of
19 one percent of the consideration with respect to all other transfers of
20 an economic interest in real property where the consideration is five
21 hundred thousand dollars or less, and at the rate of two and six hundred
22 twenty-five thousandths of one percent of the consideration where the
23 consideration for such transfers is more than five hundred thousand
24 dollars.

25 (C) Where any real property, the economic interest in which is trans-
26 ferred, is situated partly within and partly without the boundaries of
27 the city of Staten Island, the consideration subject to tax shall be
28 such part of the consideration as is attributable to that portion of
29 such real property which is situated within the city of Staten Island.

30 (2) Notwithstanding the definition of "controlling interest" contained
31 in subdivision eight of section 11-2101 of this chapter or anything to
32 the contrary contained in subdivision seven of such section, in the case
33 of any transfer of shares of stock in a cooperative housing corporation
34 in connection with the grant or transfer of a proprietary leasehold, the
35 tax imposed by this subdivision shall apply to (i) the original transfer
36 of such shares of stock by the cooperative corporation or cooperative
37 plan sponsor, and (ii) any subsequent transfer of such shares of stock
38 by the owner thereof. Notwithstanding any provision of this chapter to
39 the contrary, in the case of a transfer described in clause (ii) of this
40 subparagraph which relates to an individual residential unit, the
41 consideration for such transfer shall not include any portion of the
42 unpaid principal of any mortgage on the real property of the cooperative
43 housing corporation. In determining the tax on a transfer described in
44 clause (i) of this subparagraph, a credit shall be allowed for a propor-
45 tionate part of the amount of any tax paid upon the conveyance to the
46 cooperative housing corporation of the land and building or buildings
47 comprising the cooperative dwelling or dwellings. Such proportionate
48 part shall be the amount determined by multiplying the amount of tax
49 paid upon the conveyance to the cooperative housing corporation by a
50 fraction, the numerator of which shall be the number of shares of stock
51 transferred in a transaction described in clause (i) of this subpara-
52 graph and the denominator of which shall be the total number of
53 outstanding shares of stock of the cooperative housing corporation,
54 including any stock held by the corporation. In no event, however, shall
55 such credit reduce the tax on a transfer described in clause (i) of this
56 subparagraph below zero, nor shall any such credit be allowed for any

1 tax paid more than twenty-four months prior to the date on which occurs
2 the first in a series of transfers of shares of stock in an offering of
3 cooperative housing corporation shares described in clause (i) of this
4 subparagraph. For purposes of this paragraph, the term "cooperative
5 housing corporation" shall not include a housing company organized and
6 operating pursuant to the provisions of article two, four, five or elev-
7 en of the private housing finance law.

8 (3) Notwithstanding the definition of "controlling interest" contained
9 in paragraph eight of section 11-2101 of this chapter or anything to the
10 contrary contained in paragraph seven of such section, in the case of a
11 corporation, other than a cooperative housing corporation, partnership,
12 association, trust or other entity formed for the purpose of cooperative
13 ownership of real property, the tax imposed by this subdivision shall
14 apply to each transfer of shares of stock in such corporation, interest
15 in such partnership, association or other entity or beneficial interest
16 in such trust, in connection with the grant or transfer of a proprietary
17 leasehold. Notwithstanding any provision of this chapter to the contra-
18 ry, in the case of a transfer described in this paragraph which relates
19 to an individual residential unit, other than the original transfer of
20 such a unit by the cooperative entity or cooperative plan sponsor, the
21 consideration for such transfer shall not include any portion of the
22 unpaid principal of any mortgage on the real property of such corpo-
23 ration, partnership, association, trust or other entity. Notwithstanding
24 any other provision of law to the contrary, all revenues arising from
25 the tax imposed pursuant to this paragraph shall be credited to and
26 deposited in the general fund of the city, but no part of such revenues
27 may be expended unless appropriated in the annual budget of the city.

28 c. (1) Anything to the contrary notwithstanding, in the case of any
29 conveyance or transfer of real property or any economic interest therein
30 in complete or partial liquidation of a corporation, partnership, asso-
31 ciation, trust or other entity, the taxes imposed by this section shall
32 be measured by (i) the consideration for such conveyance or transfer, or
33 (ii) the value of the real property or economic interest therein, which-
34 ever is greater.

35 (2) If, within twenty-four months following the transfer of an econom-
36 ic interest in real property which is subject to the tax imposed by this
37 chapter, the corporation, partnership, association, trust or other enti-
38 ty owning the real property the economic interest in which was so trans-
39 ferred, is liquidated, and such real property is conveyed to the grantee
40 or grantees of such economic interest, a credit shall be allowed against
41 the tax imposed by this chapter upon such conveyance in liquidation to
42 such grantee or grantees. The amount of such credit shall be equal to
43 the amount of the tax paid upon the prior transfer of the economic
44 interest in such real property, but shall in no event be greater than
45 the tax payable upon the conveyance in liquidation.

46 d. In the case of a transfer of an economic interest in any entity
47 that owns assets in addition to real property or interest therein, the
48 consideration subject to tax shall be deemed equal to the fair market
49 value of the real property or interest therein apportioned based on the
50 percentage of the ownership interest in the entity transferred.

51 e. (1) Notwithstanding anything contained in this section, the tax
52 imposed under subdivisions a and b of this section on any deed or other
53 instrument or transaction conveying or transferring real property or an
54 economic interest therein, that qualifies as a real estate investment
55 trust transfer, as defined below, shall be imposed at a rate equal to
56 fifty percent of the otherwise applicable rate.

1 (2) For purposes of this subdivision, a real estate investment trust
2 transfer shall mean (A) any deed or other instrument or transaction
3 conveying or transferring real property or an economic interest therein
4 to a real estate investment trust as defined in section eight hundred
5 fifty-six of the internal revenue code (a "REIT") or to a partnership or
6 corporation in which a REIT owns a controlling interest immediately
7 following the transaction; and (B) any issuance or transfer of an inter-
8 est in a REIT, or in a partnership or corporation in which a REIT owns a
9 controlling interest immediately following the issuance or transfer in
10 connection with a transaction described in subparagraph (A) of this
11 paragraph.

12 Provided, however, a transaction described in the opening paragraph
13 of this paragraph shall not constitute a real estate investment trust
14 transfer unless (i) it occurs in connection with the initial formation
15 of the REIT and the conditions described in subparagraphs (C) and (D) of
16 this paragraph are satisfied, or (ii) in the case of any real estate
17 investment trust transfer occurring on or after July thirteenth, nine-
18 teen hundred ninety-six and before September first, two thousand twenty-
19 six, the transaction is described in subparagraph (E) of this para-
20 graph in which case the provision of such subparagraph shall apply.

21 (C) The value of the ownership interests in the REIT, or in a partner-
22 ship or corporation in which the REIT owns a controlling interest,
23 received by the grantor as consideration for such conveyance or transfer
24 must be equal to an amount not less than forty percent of the value of
25 the equity interest in the real property or economic interest therein
26 conveyed or transferred by the grantor to the grantee and such ownership
27 interests must be retained by the grantor or owners of the grantor for a
28 period of not less than two years following the date of such conveyance
29 or transfer; provided, however, that in the case of the death of the
30 grantor or an owner of the grantor within such two year period, this two
31 year retention requirement shall be deemed to be satisfied notwithstand-
32 ing any conveyance or transfer of such ownership interests held by such
33 individual as a result of such death. The value of the equity interest
34 in such real property or economic interest therein shall be computed by
35 subtracting from the consideration for the conveyance or transfer of the
36 real property or economic interest therein the unpaid balance of any
37 loans secured by mortgages or other encumbrances which are liens on the
38 real property or economic interest therein immediately before the
39 conveyance or transfer. For purposes of this computation, in the case of
40 a conveyance or transfer of real property other than a conveyance or
41 transfer of an economic interest in real property, the amount of the
42 unpaid balance of any loans secured by mortgages or other encumbrances
43 to be subtracted from consideration is determined by multiplying the
44 total unpaid balance of any loans secured by mortgages or other encum-
45 brances on the real property by the percentage of the ownership interest
46 in the real property being conveyed or transferred to the grantee. In
47 the case of a transfer of an economic interest in real property, such
48 amount to be subtracted is equal to the sum of the following amounts:
49 (i) a reasonable apportionment to the interests in real property owned
50 by the entity of the amount of any loans secured by encumbrances on the
51 ownership interests in the entity which are being conveyed or trans-
52 ferred and (ii) the amount of any loans secured by mortgages or other
53 encumbrances on the real property of the entity multiplied by the
54 percentage interest in the entity which is being conveyed or trans-
55 ferred.

1 Provided, however, that for purposes of the computation made pursuant
2 to this subparagraph, any mortgages or other encumbrances on the real
3 property or economic interest therein which are created in contemplation
4 of the initial formation of the REIT or in contemplation of the convey-
5 ance or transfer of such real property or economic interest therein to
6 the REIT or to a partnership or corporation in which the REIT owns a
7 controlling interest immediately following the conveyance or transfer
8 shall not be considered.

9 (D) Seventy-five percent or more of the cash proceeds received by such
10 REIT from the sale of ownership interests in such REIT upon its initial
11 formation must be used: (i) to make payments on loans secured by any
12 interest in real property, including an ownership interest in an entity
13 owning real property, which is owned directly or indirectly by such
14 REIT; (ii) to pay for capital improvements to real property or any
15 interest therein owned directly or indirectly by such REIT; (iii) to pay
16 brokerage fees and commissions, professional fees and payments to or on
17 behalf of a tenant as an inducement to enter into a lease or sublease
18 incurred in connection with the creation of a leasehold or sublease
19 pertaining to real property or any interest therein owned directly or
20 indirectly by such REIT; (iv) to acquire any interest in real property,
21 including an ownership interest in any entity owning real property,
22 apart from any acquisition to which a reduced rate of tax is applicable
23 pursuant to this subdivision, without regard to this subparagraph; or
24 (v) for reserves established for any of the purposes described in clause
25 (i), (ii) or (iii) of this subparagraph. For purposes of this subpara-
26 graph, the term real property shall include real property wherever
27 located.

28 (E) If a transaction otherwise described in subparagraph (A) or (B) of
29 this paragraph occurs other than in connection with the initial forma-
30 tion of a REIT, the condition set forth in subparagraph (D) shall be
31 disregarded and such transaction shall constitute a "real estate invest-
32 ment trust transfer" if the condition set forth in subparagraph (C)
33 would be satisfied if "fifty percent" is substituted for "forty percent"
34 therein.

35 (3) For purposes of determining the consideration for a real estate
36 investment trust transfer taxable under this subdivision the value of
37 the real property or interest therein shall be equal to the estimated
38 market value as determined by the commissioner of finance for real prop-
39 erty tax purposes as reflected on the most recent notice of assessment
40 issued by such commissioner, or such other value as the taxpayer may
41 establish to the satisfaction of such commissioner.

42 (4) This subdivision shall only apply to real estate investment trust
43 transfers occurring on or after the effective date of this subdivision.

44 f. Notwithstanding any other provision of this chapter, in determining
45 the tax imposed by this chapter with respect to a deed, instrument or
46 transaction conveying or transferring a one, two or three-family house,
47 an individual residential condominium unit, an individual residential
48 cooperative apartment, or an interest therein, the consideration for
49 such conveyance or transfer shall exclude, to the extent otherwise
50 included therein, the amount of any mortgage or other lien or encum-
51 brance on the real property or interest therein that existed before the
52 delivery of the deed or the transfer and remains thereon after the date
53 of delivery of the deed or the transfer, other than any mortgage, lien
54 or encumbrance placed on the property or interest in connection with, or
55 in anticipation of, the conveyance or transfer, or by reason of deferred
56 payments of the purchase price whether represented by notes or other-

1 wise. Provided, however, that this subdivision shall not apply to a
2 conveyance or transfer (1) to a mortgagee, lienor or encumbrancer,
3 regardless of whether the grantor or transferor is or was personally
4 liable for the indebtedness secured by the mortgage, lien or encumbrance
5 or whether the mortgage, lien or encumbrance is canceled of record, or
6 (2) which qualifies as a "real estate investment trust transfer" as
7 defined in subdivision e of this section.

8 § 11-2103 Presumptions and burden of proof. For the purpose of the
9 proper administration of this chapter and to prevent evasion of the tax
10 hereby imposed, it shall be presumed that all deeds and transfers of
11 economic interests in real property are taxable. Where the consider-
12 ation includes property other than money, it shall be presumed that the
13 consideration is the value of the real property or interest therein.
14 Such presumptions shall prevail until the contrary is established and
15 the burden of proving the contrary shall be on the taxpayer. The burden
16 of proving that a lien or encumbrance existed on the real property or
17 interest therein before the delivery of the deed and remained thereon
18 thereafter and the burden of proving the amount of such lien or encum-
19 brance at the time of the delivery of the deed shall be on the taxpayer.

20 § 11-2104 Payment. The tax imposed hereunder shall be paid by the
21 grantor to the commissioner of finance at the office of the register in
22 the county where the deed is or would be recorded within thirty days
23 after the delivery of the deed by the grantor to the grantee but before
24 the recording of such deed, or, in the case of a tax on the transfer of
25 an economic interest in real property, at such place as the commissioner
26 of finance shall designate, within thirty days after the transfer. The
27 grantee shall also be liable for the payment of such tax in the event
28 that the amount of tax due is not paid by the grantor or the grantor is
29 exempt from tax. All moneys received as such payments by the register
30 during the preceding month shall be transmitted to the commissioner of
31 finance on the first day of each month or on such other day as is mutu-
32 ally agreeable to the commissioner of finance and the register. From the
33 moneys so received by him or her, the commissioner of finance shall set
34 said in a special account:

35 (1) the total amount of taxes imposed pursuant to the provisions of
36 paragraph three of subdivision a of section 11-2102 of this chapter
37 including any interest or penalties thereon;

38 (2) fifty percent of the total amount of taxes imposed pursuant to the
39 provisions of paragraph four of subdivision a of section 11-2102 of this
40 chapter, including fifty percent of any interest or penalties thereon,
41 provided, however, that where such tax is measured by the consideration
42 for a conveyance without deduction for the amount of any mortgage or
43 other lien or encumbrance on the real property or interest therein which
44 existed before the delivery of the deed and remains thereon after the
45 delivery of the deed, the entire amount of tax imposed at the rate of
46 one percent on the portion of the consideration ascribable to such
47 nondeductible mortgage, lien or other encumbrance, including any inter-
48 est or penalties thereon, and fifty percent of the tax on the balance of
49 the consideration, including fifty percent of any interest or penalties
50 thereon, shall be set aside in such special account;

51 (3) fifty percent of the total amount of taxes imposed pursuant to the
52 provisions of subparagraph (iii) of paragraph seven of subdivision a of
53 section 11-2102 of this chapter, including fifty percent of any interest
54 or penalties thereon;

55 (4) fifty percent of the total amount of taxes imposed pursuant to the
56 provisions of paragraph eight of subdivision a of section 11-2102 of

1 this chapter, including fifty percent of any interest or penalties thereon;
2

3 (5) fifty percent of the total amount of taxes imposed at the rate of
4 two percent pursuant to the provisions of clause (ii) of subparagraph A
5 of paragraph one of subdivision b of section 11-2102 of this chapter
6 including fifty percent of any interest or penalties thereon;

7 (6) with respect to any conveyance of real property, transfer of an
8 economic interest therein, or any grant, assignment or surrender of a
9 leasehold interest in real property, made on or after August first,
10 nineteen hundred eighty-nine and taxable under this chapter, in each
11 instance where the tax rate is in excess of two percent, a portion of
12 the tax received equal to one percent of the consideration subject to
13 the tax plus any interest or penalty attributable to such portion of the
14 tax; and

15 (7) notwithstanding anything in subdivision six of this section to the
16 contrary, in each instance where the tax rate imposed pursuant to subdivision
17 e of section 11-2102 of this chapter is in excess of one percent,
18 a portion of the tax received equal to one-half of one percent of the
19 total consideration for the real property or economic interest therein
20 conveyed or transferred, plus any interest or penalty attributable to
21 such portion of the tax.

22 Moneys in such account shall be used for payment by such commissioner
23 to the state comptroller for deposit in the urban mass transit operating
24 assistance account of the mass transportation operating assistance fund
25 of any amount of insufficiency certified by the state comptroller pursuant
26 to the provisions of subdivision six of section eighty-eight-a of
27 the state finance law, and, on the fifteenth day of each month, the
28 commissioner of finance shall transmit all funds in such account on the
29 last day of the preceding month, except the amount required for the
30 payment of any amount of insufficiency certified by the state comptroller
31 and such amount as he or she deems necessary for refunds and
32 such other amounts necessary to finance the New York City transportation
33 disabled committee and the New York City paratransit system as established
34 by section fifteen-b of the transportation law, provided, however,
35 that such amounts shall not exceed six percent of the total funds in
36 the account but in no event be less than one hundred seventy-five thousand
37 dollars beginning April first, nineteen hundred eighty-six, and
38 further that beginning November fifteenth, nineteen hundred eighty-four
39 and during the entire period prior to operation of such system, the
40 total of such amounts shall not exceed three hundred seventy-five thousand
41 dollars for the administrative expenses of such committee and fifty
42 thousand dollars for the expenses of the agency designated pursuant to
43 paragraph b of subdivision five of such section, and other amounts
44 necessary to finance the operating needs of the private bus companies
45 franchised by the city of New York and eligible to receive state operating
46 assistance under section eighteen-b of the transportation law,
47 provided, however, that such amounts shall not exceed four percent of
48 the total funds in the account, to the New York city transit authority
49 for mass transit within the city.

50 § 11-2105 Returns. a. A joint return shall be filed by both the
51 grantor and the grantee for each deed whether or not a tax is due thereon.
52 Such return shall be filed with the commissioner of finance within
53 thirty days after the delivery of the deed by the grantor to the grantee
54 but before the recording of such deed. The commissioner of finance may,
55 by rule, require that such returns be filed electronically.

1 Filing shall be accomplished by delivering the return to the register
2 for transmittal to the commissioner of finance or, where required by the
3 commissioner of finance, by electronic filing of the return in a manner
4 designated by the commissioner of finance. In the case of a transfer of
5 an economic interest in real property, a joint return shall be filed in
6 the above manner by both the grantor and the grantee for each instrument
7 or transaction by which such transfer is effected, whether or not a tax
8 is due thereon. Such return shall be filed with the commissioner of
9 finance, at such place and in such manner as he or she may designate
10 within thirty days after the transfer. The commissioner of finance shall
11 prescribe the form of the return and the information which it shall
12 contain. The return shall be signed by both the grantor or the grantor's
13 agent and the grantee or the grantee's agent. Where the commissioner of
14 finance requires electronic filing, the return shall be signed electron-
15 ically. Upon the filing of such return for a deed, evidence of the
16 filing shall be affixed to the deed by the register. The commissioner of
17 finance may provide for the use of stamps as evidence of payment and
18 that they shall be affixed to the deed before it is recorded. Where
19 either the grantor or grantee has failed to sign the return, it shall be
20 accepted as a return, but the party who has failed to sign the return or
21 file a separate return shall be subject to the penalties applicable to a
22 person who has failed to file a return and the period of limitations for
23 assessment of tax or of additional tax shall not apply to such party.
24 For good cause, the commissioner of finance may waive any rule requiring
25 electronic filing and may permit a return to be filed in such other
26 manner as the commissioner of finance may designate.

27 b. Returns shall be preserved for three years and thereafter until
28 the commissioner of finance permits them to be destroyed.

29 c. The commissioner of finance may require amended returns to be filed
30 within twenty days after notice and to contain the information specified
31 in the notice.

32 d. If a return required by this chapter is not filed or if a return
33 when filed is incorrect or insufficient on its face the commissioner of
34 finance shall take the necessary steps to enforce the filing of such a
35 return or of a corrected return.

36 e. Where a deed, or instrument or transaction has more than one gran-
37 tor or more than one grantee, the return may be signed by any one of the
38 grantors and by any one of the grantees, provided, however, that those
39 not signing shall not be relieved of any liability for the tax imposed
40 by this chapter.

41 f. The payment of, and the filing of returns relating to, the taxes
42 imposed hereunder, shall be required as a condition precedent to the
43 recording or filing of a deed, lease, assignment or surrender of lease
44 or other instrument effecting a conveyance or transfer subject to such
45 taxes.

46 g. Every cooperative housing corporation shall be required to file an
47 information return with the commissioner of finance as follows: such
48 information return shall be filed by February fifteenth of the year two
49 thousand and of each year thereafter, covering the reporting period
50 beginning on January sixth of the year preceding the filing and ending
51 on January fifth of the year of the filing. For reporting periods begin-
52 ning before January sixth, nineteen hundred ninety-nine, such informa-
53 tion return shall be filed by July fifteenth of each year covering the
54 preceding period of January first through June thirtieth and by January
55 fifteenth of each year covering the preceding period of July first
56 through December thirty-first provided, however, that for the reporting

1 period from January first through June thirtieth, nineteen hundred
2 eighty-nine, such information return shall be filed by July thirty-
3 first, nineteen hundred eighty-nine. The return shall contain such
4 information regarding the transfer of shares of stock in the cooperative
5 housing corporation as the commissioner may deem necessary, including
6 but not limited to, the names, addresses and employer identification
7 numbers or social security numbers of the grantor and the grantee, the
8 number of shares transferred, the date of the transfer and the consider-
9 ation paid for such transfer, provided, however, that if such cooper-
10 ative housing corporation elects that such information return be deemed
11 an application for an abatement pursuant to paragraph (f) of subdivision
12 three of section four hundred sixty-seven-a of the real property tax
13 law, such return shall contain the information required pursuant to
14 paragraph (d) of subdivision three of such section. The commissioner of
15 finance may enter into an agreement with the commissioner of taxation
16 and finance of the state of New York to provide that a single informa-
17 tion return may be filed for purposes of the tax imposed by this chapter
18 and the real estate transfer tax imposed by article thirty-one of the
19 tax law.

20 h. Returns with respect to the conveyance of a one- or two-family
21 dwelling will not be accepted for filing unless accompanied by an affi-
22 davit signed by the grantor and grantee indicating that the premises is
23 equipped with an approved and operational smoke detecting device as
24 provided in article six of subchapter seventeen of chapter one of title
25 twenty-seven of this code.

26 i. When the grantor or grantee of a deed for a building used as resi-
27 dential real property containing up to four family dwelling units is a
28 limited liability company, the joint return shall not be accepted for
29 filing unless it is accompanied by a document which identifies the names
30 and business addresses of all members, managers, and any other author-
31 ized persons, if any, of such limited liability company and the names
32 and business addresses or, if none, the business addresses of all share-
33 holders, directors, officers, members, managers and partners of any
34 limited liability company or other business entity that are to be the
35 members, managers or authorized persons, if any, of such limited liabil-
36 ity company. The identification of such names and addresses shall not be
37 deemed an unwarranted invasion of personal privacy pursuant to article
38 six of the public officers law. If any such member, manager or author-
39 ized person of the limited liability company is itself a limited liabil-
40 ity company or other business entity other than a publicly traded enti-
41 ty, a REIT, an UPREIT, or a mutual fund, the names and addresses of the
42 shareholders, directors, officers, members, managers and partners of the
43 limited liability company or other business entity shall also be
44 disclosed until full disclosure of ultimate ownership by natural persons
45 is achieved. For purposes of this subdivision, the terms "members",
46 "managers", "authorized person", "limited liability company" and "other
47 business entity" shall have the same meaning as those terms are defined
48 in section one hundred two of the limited liability company law.

49 § 11-2106 Exemptions. a. The following shall be exempt from the
50 payment of the tax imposed by this chapter and from filing a return:

51 1. The state of New York, or any of its agencies, instrumentalities,
52 public corporations, including a public corporation created pursuant to
53 agreement or compact with another state or the Dominion of Canada, or
54 political subdivisions;

55 2. The United States of America, and any of its agencies and instru-
56 mentalities, insofar, as they are immune from taxation, provided, howev-

1 er, that the exemption of such governmental bodies or persons shall not
2 relieve a grantee from them of liability for the tax or from filing a
3 return.

4 b. The tax imposed by this chapter shall not apply to any of the
5 following deeds, instruments or transactions:

6 1. A deed, instrument or transaction conveying or transferring real
7 property or an economic interest therein by or to the United Nations or
8 other world-wide international organizations of which the United States
9 of America is a member;

10 2. A deed, instrument or transaction conveying or transferring real
11 property or an economic interest therein by or to any corporation, or
12 association, or trust, or community chest, fund or foundation, organized
13 or operated exclusively for religious, charitable, or educational
14 purposes, or for the prevention of cruelty to children or animals, and
15 no part of the net earnings of which inures to the benefit of any
16 private shareholder or individual and no substantial part of the activ-
17 ities of which is carrying on propaganda, or otherwise attempting to
18 influence legislation; provided, however, that nothing in this paragraph
19 shall include an organization operated for the primary purpose of carry-
20 ing on a trade or business for profit, whether or not all of its profits
21 are payable to one or more organizations described in this paragraph;

22 3. A deed, instrument or transaction conveying or transferring real
23 property or an economic interest therein to any governmental body or
24 person exempt from payment of the tax pursuant to subdivision a of this
25 section;

26 4. A deed delivered pursuant to a contract made prior to May first,
27 nineteen hundred fifty-nine;

28 5. A deed delivered by any governmental body or person exempt from
29 payment of the tax pursuant to subdivision a of this section as a result
30 of a sale at a public auction held in accordance with the provisions of
31 a contract made prior to May first, nineteen hundred fifty-nine;

32 6. A deed or instrument given solely as security for, or a transaction
33 the sole purpose of which is to secure, a debt or obligation or a deed
34 or instrument given, or a transaction entered into, solely for the
35 purpose of returning such security;

36 7. A deed, instrument or transaction conveying or transferring real
37 property or an economic interest therein from a mere agent, dummy, straw
38 man or conduit to his principal or a deed, instrument or transaction
39 conveying or transferring real property or an economic interest therein
40 from the principal to his agent, dummy, straw man or conduit.

41 8. A deed, instrument or transaction conveying or transferring real
42 property or an economic interest therein that effects a mere change of
43 identity or form of ownership or organization to the extent the benefi-
44 cial ownership of such real property or economic interest therein
45 remains the same, other than a conveyance to a cooperative housing
46 corporation of the land and building or buildings comprising the cooper-
47 ative dwelling or dwellings. For purposes of this paragraph, the term
48 "cooperative housing corporation" shall not include a housing company
49 organized and operating pursuant to the provisions of article two, four,
50 five or eleven of the private housing finance law.

51 9. A deed, instrument or transaction conveying or transferring real
52 property or an economic interest therein by or to any housing develop-
53 ment fund company organized pursuant to article eleven of the private
54 housing finance law or to an entity, the controlling interest of which
55 is held by such a company, if at the time of such conveyance or trans-
56 fer, such real property is subject to, or simultaneously with such

1 conveyance or transfer is made subject to, a regulatory agreement with
2 the state of New York, a municipal corporation or any other public
3 corporation created by or pursuant to any law of the state of New York
4 that: encumbers the real property for thirty years or more, requires
5 mutual consent for revocation or amendment, restricts more than fifty
6 percent of the floor area, other than common areas, to residential real
7 property, and restricts at least sixty-six and two-thirds percent of
8 such residential real property to purchase, lease, license or other use
9 by persons of low income and families of low income within the meaning
10 of section two of the private housing finance law; provided, however,
11 that if such regulatory agreement restricts less than one hundred
12 percent of the floor area, other than common areas, to purchase, lease,
13 license or other use by persons of low income and families of low income
14 within the meaning of section two of the private housing finance law,
15 the tax shall apply to the consideration less the product of the consid-
16 eration and a fraction, the numerator of which is the floor area that
17 such regulatory agreement restricts to purchase, lease, license or other
18 use by persons of low income and families of low income within the mean-
19 ing of section two of the private housing finance law and the denomina-
20 tor of which is the entire floor area, minus the floor area of common
21 areas; provided further, that if such real property is made subject to a
22 regulatory agreement that meets the terms of this paragraph within two
23 years of the conveyance or transfer then the commissioner of finance may
24 issue a refund based on the application of this paragraph pursuant to
25 the provisions of section 11-2108 of this chapter, treating the transfer
26 or conveyance as if such real property were subject to such regulatory
27 agreement as of the date of such transfer or conveyance, if, notwith-
28 standing any other time limitation set forth in section 11-2108 of this
29 chapter, application to the commissioner of finance for such refund is
30 made within twelve months of the effective date of such regulatory
31 agreement.

32 c. Notwithstanding any provision of this chapter to the contrary,
33 where stock of a cooperative housing corporation and the appurtenant
34 proprietary leasehold are transferred to such cooperative housing corpo-
35 ration or a wholly owned subsidiary of such housing corporation, or to
36 the holder of a mortgage on the real property of such cooperative hous-
37 ing corporation or a wholly owned subsidiary of such holder of a mort-
38 gage on the real property of such cooperative housing corporation, such
39 cooperative housing corporation or its wholly owned subsidiary, or such
40 mortgage holder or its wholly owned subsidiary, shall not be liable as
41 grantee for the tax determined to be due under this chapter from the
42 grantor in such transfer, provided that such transfer occurred pursuant
43 to, as the result of, or in connection with an action, proceeding, or
44 other procedure to which such cooperative housing corporation is a
45 party, to enforce a lien, security interest or other rights on or in
46 such stock and proprietary leasehold, including but not limited to
47 rights under the proprietary lease. This subdivision shall apply to
48 transfers occurring on or after June sixteenth, nineteen hundred nine-
49 ty-two.

50 § 11-2107 Determination of tax. If a return required by this chapter
51 is not filed, or if a return when filed is incorrect or insufficient,
52 the amount of tax due shall be determined by the commissioner of finance
53 from such information as may be obtainable, including the assessed valu-
54 ation of the real property or interest therein. Notice of such determi-
55 nation shall be given to the person liable for the tax. Such determi-
56 nation shall finally and irrevocably fix the tax unless the person

1 against whom it is assessed, within ninety days after the giving of
2 notice of such determination, or, if the commissioner of finance has
3 established a conciliation procedure pursuant to section 11-124 of the
4 code of the preceding municipality and the taxpayer has requested a
5 conciliation conference in accordance therewith, within ninety days from
6 the mailing of a conciliation decision or the date of the commissioner's
7 confirmation of the discontinuance of the conciliation proceeding, both
8 (1) serves a petition upon the commissioner of finance and (2) files a
9 petition with the tax appeals tribunal for a hearing, or, unless the
10 commissioner of finance of his or her own motion shall redetermine the
11 same. Such hearing and any appeal to the tax appeals tribunal sitting en
12 banc from the decision rendered in such hearing shall be conducted in
13 the manner and subject to the requirements prescribed by the tax appeals
14 tribunal pursuant to sections one hundred sixty-eight through one
15 hundred seventy-two of the charter of the preceding municipality as it
16 existed January first, nineteen hundred ninety-four. After such hearing
17 the tax appeals tribunal shall give notice of its decision to the person
18 against whom the tax is assessed and to the commissioner of finance. A
19 decision of the tax appeals tribunal sitting en banc shall be reviewable
20 for error, illegality or unconstitutionality or any other reason whatso-
21 ever by a proceeding under article seventy-eight of the civil practice
22 law and rules if application therefor is made to the supreme court by
23 the person against whom the tax was assessed within four months after
24 the giving of the notice of such tax appeals tribunal decision. A
25 proceeding under article seventy-eight of the civil practice law and
26 rules shall not be instituted by a taxpayer unless: (a) the amount of
27 any tax sought to be reviewed, with penalties and interest thereon, if
28 any, shall be first deposited with the commissioner of finance and there
29 shall be filed with the commissioner of finance an undertaking, issued
30 by a surety company authorized to transact business in this state and
31 approved by the superintendent of insurance of this state as to solvency
32 and responsibility, in such amount and with such sureties as a justice
33 of the supreme court shall approve, to the effect that if such proceed-
34 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
35 and charges which may accrue in the prosecution of the proceeding; or
36 (b) at the option of the taxpayer such undertaking filed with the
37 commissioner of finance may be in a sum sufficient to cover the taxes,
38 penalties and interest thereon stated in such decision plus the costs
39 and charges which may accrue against it in the prosecution of the
40 proceeding, in which event the taxpayer shall not be required to deposit
41 such taxes, penalties and interest as a condition precedent to the
42 application.

43 § 11-2108 Refunds. a. In the manner provided in this section the
44 commissioner of finance shall refund or credit, without interest, any
45 tax, penalty or interest erroneously, illegally or unconstitutionally
46 collected or paid if application to the commissioner of finance for such
47 refund shall be made within one year from the payment thereof. Whenever
48 a refund is made or denied by the commissioner of finance, the commis-
49 sioner shall state his or her reason therefor and give notice thereof to
50 the taxpayer in writing. Such application may be made by the grantor,
51 grantee or other person who has actually paid the tax. The commissioner
52 of finance may, in lieu of any refund required to be made, allow credit
53 therefor on payments due from the applicant.

54 b. Any determination of the commissioner of finance denying a refund
55 or credit pursuant to subdivision a of this section shall be final and
56 irrevocable unless the applicant for such refund or credit, within nine-

1 ty days from the mailing of notice of such determination, or, if the
2 commissioner of finance has established a conciliation procedure pursu-
3 ant to section 11-124 of the code of the preceding municipality and the
4 applicant has requested a conciliation conference in accordance there-
5 with, within ninety days from the mailing of a conciliation decision or
6 the date of the commissioner's confirmation of the discontinuance of the
7 conciliation proceeding, both (1) serves a petition upon the commission-
8 er of finance and (2) files a petition with the tax appeals tribunal for
9 a hearing. Such petition for a refund or credit made as herein provided
10 shall be deemed an application for a revision of any tax, penalty or
11 interest complained of. Such hearing and any appeal to the tax appeals
12 tribunal sitting en banc from the decision rendered in such hearing
13 shall be conducted in the manner and subject to the requirements
14 prescribed by the tax appeals tribunal pursuant to sections one hundred
15 sixty-eight through one hundred seventy-two of the charter of the
16 preceding municipality as it existed January first, nineteen hundred
17 ninety-four. After such hearing, the tax appeals tribunal shall give
18 notice of its decision to the applicant and the commissioner of finance.
19 The applicant shall be entitled to review such decision of the tax
20 appeals tribunal sitting en banc by a proceeding pursuant to article
21 seventy-eight of the civil practice law and rules, provided such
22 proceeding is instituted within four months after the giving of notice
23 of such decision, and provided, in the case of an application by a
24 taxpayer, that a final determination of tax due was not previously made.
25 Such a proceeding shall not be instituted by a taxpayer unless an under-
26 taking is filed with the commissioner of finance in such amount and with
27 such sureties as a justice of the supreme court shall approve to the
28 effect that if such proceeding be dismissed or the tax confirmed, the
29 taxpayer will pay all costs and charges which may accrue in the prose-
30 cution of such proceeding.

31 c. A person shall not be entitled to a revision, refund or credit
32 under this section of a tax, interest or penalty which had been deter-
33 mined to be due pursuant to the provisions of section 11-2107 of this
34 chapter where he or she has had a hearing or an opportunity for a hear-
35 ing, as provided in said section, or has failed to avail himself or
36 herself of the remedies therein provided. No refund or credit shall be
37 made of a tax, interest or penalty paid after a determination by the
38 commissioner of finance made pursuant to section 11-2107 of this chapter
39 unless it be found that such determination was erroneous, illegal or
40 unconstitutional or otherwise improper, by the tax appeals tribunal
41 after a hearing, or on the commissioner of finance's own motion, or, if
42 such tax appeals tribunal affirms in whole or in part the determination
43 of the commissioner of finance, in a proceeding under article seventy-
44 eight of the civil practice law and rules, pursuant to the provisions of
45 said section, in which event refund or credit without interest shall be
46 made of the tax, interest or penalty found to have been overpaid.

47 § 11-2109 Reserves. In cases where the grantor or grantee has
48 applied for a refund and has instituted a proceeding under article
49 seventy-eight of the civil practice law and rules to review a determi-
50 nation adverse to him or her on his or her application for refund, the
51 comptroller shall set up appropriate reserves to meet any decision
52 adverse to the city.

53 § 11-2110 Remedies exclusive. The remedies provided by sections
54 11-2107 and 11-2108 of this chapter shall be exclusive remedies avail-
55 able to any person for the review of tax liability imposed by this chap-
56 ter; and no determination or proposed determination of tax or determi-

1 nation on any application for refund shall be enjoined or reviewed by an
2 action for declaratory judgment, an action for money had and received or
3 by any action or proceeding other than a proceeding in the nature of a
4 certiorari proceeding under article seventy-eight of the civil practice
5 law and rules; provided, however, that a taxpayer may proceed by declar-
6 atory judgment if he or she institutes suit within thirty days after a
7 deficiency assessment is made and pays the amount of the deficiency
8 assessment to the commissioner of finance prior to the institution of
9 such suit and posts a bond for costs as provided in section 11-2107 of
10 this chapter.

11 § 11-2111 Proceedings to recover tax. a. Whenever any grantor or
12 grantee shall fail to pay any tax, penalty or interest imposed by this
13 chapter as herein provided, the corporation counsel shall, upon the
14 request of the commissioner of finance bring or cause to be brought an
15 action to enforce the payment of the same on behalf of the city of
16 Staten Island in any court of the state of New York or of any other
17 state or of the United States. If, however, the commissioner of finance
18 in his or her discretion believes that any such grantor or grantee
19 subject to the provisions of this chapter is about to cease business,
20 leave the state or remove or dissipate the assets out of which the tax
21 or penalty might be satisfied, and that any such tax or penalty will not
22 be paid when due, such commissioner may declare such tax or penalty to
23 be immediately due and payable and may issue a warrant immediately.

24 b. As an additional or alternate remedy, the commissioner of finance
25 may issue a warrant, directed to the city sheriff commanding him or her
26 to levy upon and sell the real and personal property of the grantor,
27 grantee or other person liable for the tax which may be found within the
28 city, for the payment of the amount thereof, with any penalty and inter-
29 est, and the cost of executing the warrant, and to return such warrant
30 to the commissioner of finance and to pay to him or her the money
31 collected by virtue thereof within sixty days after the receipt of such
32 warrant. The city sheriff shall within five days after the receipt of
33 the warrant file with the county clerk a copy thereof, and thereupon
34 such clerk shall enter in the judgment docket the name of the person
35 mentioned in the warrant and the amount of the tax, penalty and interest
36 for which the warrant is issued and the date when such copy is filed.
37 Thereupon the amount of such warrant so docketed shall become a lien
38 upon the title to and the interest in real and personal property of the
39 person against whom the warrant is issued. The city sheriff shall then
40 proceed upon the warrant in the same manner, and with like effect, as
41 that provided by law in respect to executions issued against property
42 upon judgments of a court of record and for services in executing the
43 warrant he or she shall be entitled to the same fees, which such sheriff
44 may collect in the same manner. In the discretion of the commissioner
45 of finance a warrant of like terms, force and effect may be issued and
46 directed to an officer or employee of the department of finance, and in
47 the execution thereof such officer or employee shall have all the powers
48 conferred by law upon sheriffs, but shall be entitled to no fee or
49 compensation in excess of the actual expenses paid in the performance of
50 such duty. If a warrant is returned not satisfied in full, the commis-
51 sioner of finance may from time to time issue new warrants and shall
52 also have the same remedies to enforce the amount due thereunder as if
53 the city had recovered judgment therefor and execution thereon had been
54 returned unsatisfied.

55 c. The commissioner of finance, if he or she finds that the interests
56 of the city will not thereby be jeopardized, and upon such conditions as

1 the commissioner of finance may require, may release any property from
2 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
3 tions to tax, penalties and interest filed pursuant to subdivision b of
4 this section, and such release or vacating of the warrant may be
5 recorded in the office of any recording officer in which such warrant
6 has been filed. The clerk shall thereupon cancel and discharge as of the
7 original date of docketing the vacated warrant.

8 § 11-2112 General powers of the commissioner of finance. In addition
9 to the powers granted to the commissioner of finance in this chapter, he
10 or she is hereby authorized and empowered:

11 1. To make, adopt and amend rules and regulations appropriate to the
12 carrying out of this chapter and the purposes thereof;

13 2. To extend, for cause shown, the time for filing any return for a
14 period not exceeding thirty days; and to compromise disputed claims in
15 connection with the taxes hereby imposed;

16 3. To request information from the tax commission of the state of New
17 York or the treasury department of the United States relative to any
18 person; and to afford returns, reports and other information to such tax
19 commission or such treasury department relative to any person, any other
20 provision of this chapter to the contrary notwithstanding;

21 4. To delegate his or her functions under this section to a deputy
22 commissioner of finance or any employee or employees of the department
23 of finance;

24 5. To prescribe the methods for determining the consideration and net
25 consideration attributable to that portion of real property located
26 partly within and partly without the city of Staten Island which is
27 located within the city of Staten Island or any interest therein;

28 6. To require any grantor or grantee to keep such records, and for
29 such length of time as may be required for the proper administration of
30 this chapter and to furnish such records to the commissioner of finance
31 upon request;

32 7. To assess, determine, revise and adjust the taxes imposed under
33 this chapter.

34 § 11-2113 Administration of oaths and compelling testimony. a. The
35 commissioner of finance, his or her employees or agents duly designated
36 and authorized by him or her, the tax appeals tribunal and any of its
37 duly designated and authorized employees or agents shall have power to
38 administer oaths and take affidavits in relation to any matter or
39 proceeding in the exercise of their powers and duties under this chap-
40 ter. The commissioner of finance and the tax appeals tribunal shall have
41 power to subpoena and require the attendance of witnesses and the
42 production of books, papers and documents to secure information perti-
43 nent to the performance of the duties of the commissioner or of the tax
44 appeals tribunal under this chapter and of the enforcement of this chap-
45 ter and to examine them in relation thereto, and to issue commissions
46 for the examination of witnesses who are out of the state or unable to
47 attend before such commissioner or the tax appeals tribunal or excused
48 from attendance.

49 b. A justice of the supreme court either in court or at chambers shall
50 have power summarily to enforce by proper proceedings the attendance and
51 testimony of witnesses and the production and examination of books,
52 papers and documents called for by the subpoena of the commissioner of
53 finance or the tax appeals tribunal under this chapter.

54 c. Cross-reference; criminal penalties. For failure to obey subpoenas
55 or for testifying falsely, see section 11-4007 of this title; for

1 supplying false or fraudulent information, see section 11-4009 of this
2 title.

3 d. The officers who serve the summons or subpoena of the commissioner
4 of finance or the tax appeals tribunal and witnesses attending in
5 response thereto shall be entitled to the same fees as are allowed to
6 officers and witnesses in civil cases in courts of record, except as
7 herein otherwise provided. Such officers shall be the city sheriff and
8 his or her duly appointed deputies or any officers or employees of the
9 department of finance or the tax appeals tribunal, designated to serve
10 such process.

11 § 11-2114 Interest and penalties. (a) Interest on underpayments. If
12 any amount of tax is not paid on or before the last date prescribed for
13 payment, without regard to any extension of time granted for payment,
14 interest on such amount at the rate set by the commissioner of finance
15 pursuant to subdivision (g) of this section, or, if no rate is set, at
16 the rate of seven and one-half percent per annum, shall be paid for the
17 period from such last date to the date of payment. In computing the
18 amount of interest to be paid, such interest shall be compounded daily.
19 Interest under this subdivision shall not be paid if the amount thereof
20 is less than one dollar.

21 (b) (1) Failure to file return. (A) In case of failure to file a
22 return under this chapter on or before the prescribed date, determined
23 with regard to any extension of time for filing, unless it is shown that
24 such failure is due to reasonable cause and not due to willful neglect,
25 there shall be added to the amount required to be shown as tax on such
26 return five percent of the amount of such tax if the failure is for not
27 more than one month, with an additional five percent for each additional
28 month or fraction thereof during which such failure continues, not
29 exceeding twenty-five percent in the aggregate.

30 (B) In the case of a failure to file a return of tax within sixty days
31 of the date prescribed for filing of such return, determined with regard
32 to any extension of time for filing, unless it is shown that such fail-
33 ure is due to reasonable cause and not due to willful neglect, the addi-
34 tion to tax under subparagraph (A) of this paragraph shall not be less
35 than the lesser of one hundred dollars or one hundred percent of the
36 amount required to be shown as tax on such return.

37 (C) For purposes of this paragraph, the amount of tax required to be
38 shown on the return shall be reduced by the amount of any part of the
39 tax which is paid on or before the date prescribed for payment of the
40 tax and by the amount of any credit against the tax which may be claimed
41 upon the return.

42 (2) Failure to pay tax shown on return. In case of failure to pay the
43 amount shown as tax on a return required to be filed under this chapter
44 on or before the prescribed date, determined with regard to any exten-
45 sion of time for payment, unless it is shown that such failure is due to
46 reasonable cause and not due to willful neglect, there shall be added to
47 the amount shown as tax on such return one-half of one percent of the
48 amount of such tax if the failure is not for more than one month, with
49 an additional one-half of one percent for each additional month or frac-
50 tion thereof during which such failure continues, not exceeding twenty-
51 five percent in the aggregate. For the purpose of computing the addition
52 for any month the amount of tax shown on the return shall be reduced by
53 the amount of any part of the tax which is paid on or before the begin-
54 ning of such month and by the amount of any credit against the tax which
55 may be claimed upon the return. If the amount of tax required to be

1 shown on a return is less than the amount shown as tax on such return,
2 this paragraph shall be applied by substituting such lower amount.

3 (3) Failure to pay tax required to be shown on return. In case of
4 failure to pay any amount in respect of any tax required to be shown on
5 a return required to be filed under this chapter which is not so shown,
6 including a determination made pursuant to section 11-2107 of this chap-
7 ter, within ten days of the date of a notice and demand therefor, unless
8 it is shown that such failure is due to reasonable cause and not due to
9 willful neglect, there shall be added to the amount of tax stated in
10 such notice and demand one-half of one percent of such tax if the fail-
11 ure is not for more than one month, with an additional one-half of one
12 percent for each additional month or fraction thereof during which such
13 failure continues, not exceeding twenty-five percent in the aggregate.
14 For the purpose of computing the addition for any month, the amount of
15 tax stated in the notice and demand shall be reduced by the amount of
16 any part of the tax which is paid before the beginning of such month.

17 (4) Limitations on additions.

18 (A) With respect to any return, the amount of the addition under para-
19 graph one of this subdivision shall be reduced by the amount of the
20 addition under paragraph two of this subdivision for any month to which
21 an addition applies under both paragraphs one and two of this subdivi-
22 sion. In any case described in subparagraph (B) of paragraph one of this
23 subdivision, the amount of the addition under such paragraph one shall
24 not be reduced below the amount provided in such subparagraph.

25 (B) With respect to any return, the maximum amount of the addition
26 permitted under paragraph three of this subdivision shall be reduced by
27 the amount of the addition under paragraph one of this subdivision,
28 determined without regard to subparagraph (B) of such paragraph one,
29 which is attributable to the tax for which the notice and demand is made
30 and which is not paid within ten days of such notice and demand.

31 (c) Underpayment due to negligence. (1) If any part of an underpayment
32 of tax is due to negligence or intentional disregard of this chapter or
33 any rules or regulations hereunder, but without intent to defraud, there
34 shall be added to the tax a penalty equal to five percent of the under-
35 payment.

36 (2) There shall be added to the tax, in addition to the amount deter-
37 mined under paragraph one of this subdivision, an amount equal to fifty
38 percent of the interest payable under subdivision (a) of this section
39 with respect to the portion of the underpayment described in such para-
40 graph one which is attributable to the negligence or intentional disre-
41 gard referred to in such paragraph one, for the period beginning on the
42 last date prescribed by law for payment of such underpayment, determined
43 without regard to any extension, and ending on the date of the assess-
44 ment of the tax, or, if earlier, the date of the payment of the tax.

45 (d) Underpayment due to fraud. (1) If any part of an underpayment of
46 tax is due to fraud, there shall be added to the tax a penalty equal to
47 fifty percent of the underpayment.

48 (2) There shall be added to the tax, in addition to the penalty deter-
49 mined under paragraph one of this subdivision, an amount equal to fifty
50 percent of the interest payable under subdivision (a) of this section
51 with respect to the portion of the underpayment described in such para-
52 graph one which is attributable to fraud, for the period beginning on
53 the last day prescribed by law for payment of such underpayment, deter-
54 mined without regard to any extension, and ending on the date of the
55 assessment of the tax, or, if earlier, the date of the payment of the
56 tax.

1 (3) The penalty under this subdivision shall be in lieu of any other
2 addition to tax imposed by subdivision (b) or (c) of this section.

3 (e) Additional penalty. Any person who, with fraudulent intent, shall
4 fail to pay any tax imposed by this chapter, or to make, render, sign or
5 certify any return, or to supply any information within the time
6 required by or under this chapter, shall be liable for a penalty of not
7 more than one thousand dollars, in addition to any other amounts
8 required under this chapter to be imposed, assessed and collected by the
9 commissioner of finance. The commissioner of finance shall have the
10 power, in his or her discretion, to waive, reduce or compromise any
11 penalty under this subdivision.

12 (f) The interest and penalties imposed by this section shall be paid
13 and disposed of in the same manner as other revenues from this chapter.
14 Unpaid interest and penalties may be enforced in the same manner as the
15 tax imposed by this chapter.

16 (g)(1) Authority to set interest rates. The commissioner of finance
17 shall set the rate of interest to be paid pursuant to subdivision (a) of
18 this section, but if no such rate of interest is set, such rate shall be
19 deemed to be set at seven and one-half percent per annum. Such rate
20 shall be the rate prescribed in paragraph two of this subdivision but
21 shall not be less than seven and one-half percent per annum. Any such
22 rate set by the commissioner of finance shall apply to taxes, or any
23 portion thereof, which remain or become due on or after the date on
24 which such rate becomes effective and shall apply only with respect to
25 interest computed or computable for periods or portions of periods
26 occurring in the period in which such rate is in effect.

27 (2) General rule. The rate of interest set under this subdivision
28 shall be the sum of (i) the federal short-term rate as provided under
29 paragraph three of this subdivision, plus (ii) seven percentage points.

30 (3) Federal short-term rate. For purposes of this subdivision:

31 (A) The federal short-term rate for any month shall be the federal
32 short-term rate determined by the United States secretary of the treas-
33 ury during such month in accordance with subsection (d) of section
34 twelve hundred seventy-four of the internal revenue code for use in
35 connection with section six thousand six hundred twenty-one of the
36 internal revenue code. Any such rate shall be rounded to the nearest
37 full percent, or, if a multiple of one-half of one percent, such rate
38 shall be increased to the next highest full percent.

39 (B) Period during which rate applies.

40 (i) In general. Except as provided in clause (ii) of this subpara-
41 graph, the federal short-term rate for the first month in each calendar
42 quarter shall apply during the first calendar quarter beginning after
43 such month.

44 (ii) Special rule for the month of September, nineteen hundred eight-
45 y-nine. The federal short-term rate for the month of April, nineteen
46 hundred eighty-nine shall apply with respect to setting the rate of
47 interest for the month of September, nineteen hundred eighty-nine.

48 (4) Publication of interest rate. The commissioner of finance shall
49 cause to be published in the City Record, and give other appropriate
50 general notice of, the interest rate to be set under this subdivision no
51 later than twenty days preceding the first day of the calendar quarter
52 during which such interest rate applies. The setting and publication of
53 such interest rate shall not be included within paragraph (a) of subdi-
54 vision five of section one thousand forty-one of the city charter of the
55 preceding municipality as it existed January first, nineteen hundred
56 ninety-four relating to the definition of a rule.

1 (h) Miscellaneous. (1) The certificate of the commissioner to the
2 effect that a tax has not been paid or that information has not been
3 supplied pursuant to the provisions of this chapter shall be presumptive
4 evidence thereof.

5 (2) Cross-reference: For criminal penalties, see chapter forty of
6 this title.

7 (i) Failure to file information return. If a cooperative housing
8 corporation fails to file an information return required under subdivi-
9 sion g of section 11-2105 of this chapter on or before the prescribed
10 date, determined with regard to any extension of time for filing, unless
11 it is shown that such failure is due to reasonable cause and not due to
12 willful neglect, there shall be imposed on such cooperative housing
13 corporation a penalty of one hundred dollars for each such failure.

14 § 11-2115 Returns to be secret. a. Except in accordance with proper
15 judicial order, or as otherwise provided by law, it shall be unlawful
16 for the commissioner of finance, register or tax appeals tribunal or any
17 officer or employee of the department of finance, register or tax
18 appeals tribunal to divulge or make known in any manner any information
19 contained in or relating to any return provided for by this chapter. The
20 officers charged with the custody of such returns shall not be required
21 to produce any of them or evidence of anything contained in them in any
22 action or proceeding in any court, except on behalf of the commissioner
23 of finance in an action or proceeding under the provisions of this chap-
24 ter, or on behalf of any party to an action or proceeding under the
25 provisions of this chapter when the returns or facts shown thereby are
26 directly involved in such action or proceeding, in either of which
27 events the court may require the production of, and may admit in
28 evidence, so much of said returns or of the facts shown thereby, as are
29 pertinent to the action or proceeding and no more. Nothing in this
30 section shall be construed to prohibit the delivery to a grantor or
31 grantee of a deed or to any subsequent owner of the real property
32 conveyed by such deed or to the duly authorized representative of any of
33 them of a certified copy of any return filed in connection with the tax
34 on such deed; nor to prohibit the delivery of such a certified copy of
35 such return or of any information contained in or relating thereto to
36 the United States of America or any department thereof, the state of New
37 York or any department thereof, the city of Staten Island or any depart-
38 ment thereof provided the same is required for official business; nor to
39 prohibit the inspection for official business of such returns by the
40 register, the corporation counsel or other legal representatives of the
41 city or by the district attorney of Richmond county; nor to prohibit the
42 publication of statistics so classified as to prevent the identification
43 of particular returns or items thereof.

44 b. (1) Any officer or employee of the city who willfully violates the
45 provisions of subdivision a of this section shall be dismissed from
46 office and be incapable of holding any public office in this city for a
47 period of five years thereafter.

48 (2) Cross-reference: For criminal penalties, see chapter forty of
49 this title.

50 c. This section shall be deemed a state statute for purposes of para-
51 graph (a) of subdivision two of section eighty-seven of the public offi-
52 cers law.

53 d. Notwithstanding anything in subdivision a of this section to the
54 contrary, if a taxpayer has petitioned the tax appeals tribunal for
55 administrative review as provided in section one hundred seventy of the
56 charter of the preceding municipality as it existed January first, nine-

1 teen hundred ninety-four, the commissioner of finance shall be author-
2 ized to present to the tribunal any report or return of such taxpayer,
3 or any information contained therein or relating thereto, which may be
4 material or relevant to the proceeding before the tribunal. The tax
5 appeals tribunal shall be authorized to publish a copy or a summary of
6 any decision rendered pursuant to section one hundred seventy-one of the
7 charter of the preceding municipality as it existed January first, nine-
8 teen hundred ninety-four.

9 e. This section shall not apply to any information contained in or
10 relating to a return filed on or after the first day of January, two
11 thousand three with respect to a transaction or transfer occurring on or
12 after that date; provided, however, that this section shall continue to
13 apply to any social security account number contained in any report or
14 return pursuant to this chapter.

15 § 11-2116 Notices and limitations of time. a. Any notice authorized
16 or required under the provisions of this chapter may be given by mailing
17 the same to the person for whom it is intended in a postpaid envelope
18 addressed to such person at the address given in the last return filed
19 by him or her pursuant to the provisions of this chapter in any applica-
20 tion made by him or her, or in any deed or instrument which is the
21 subject of the notice, or, if no return has been filed or application
22 made or address stated in the deed or instrument, then to such address
23 as may be obtainable. The mailing of such notice shall be presumptive
24 evidence of the receipt of the same by the person to whom addressed.
25 Any period of time which is determined according to the provisions of
26 this chapter by the giving of notice shall commence to run from the date
27 of mailing of such notice.

28 b. The provisions of the civil practice law and rules or any other law
29 relative to limitations of time for the enforcement of a civil remedy
30 shall not apply to any proceeding or action taken by the city to levy,
31 appraise, assess, determine or enforce the collection of any tax or
32 penalty provided by this chapter. However, except in the case of a
33 wilfully false or fraudulent return with intent to evade the tax, no
34 assessment of additional tax shall be made after the expiration of more
35 than three years from the date of the filing of a return; provided,
36 however, that where no return has been filed as provided by law the tax
37 may be assessed at any time.

38 c. Where, before the expiration of the period prescribed in this
39 section for the assessment of an additional tax, a taxpayer has
40 consented in writing that such period be extended, the amount of such
41 additional tax due may be determined at any time within such extended
42 period. The period so extended may be further extended by subsequent
43 consents in writing made before the expiration of the extended period.

44 d. Except as otherwise provided in this subdivision, if any return,
45 claim, statement, notice, application, or other document required to be
46 filed, or any payment required to be made, within a prescribed period or
47 on or before a prescribed date under authority of any provision of this
48 chapter is, after such period or such date, delivered by United States
49 mail to the commissioner of finance, the tax appeals tribunal, bureau,
50 office, officer or person with which or with whom such document is
51 required to be filed, or to which or to whom such payment is required to
52 be made, the date of the United States postmark stamped on the envelope
53 shall be deemed to be the date of delivery. This subdivision shall apply
54 only if the postmark date falls within the prescribed period or on or
55 before the prescribed date for the filing of such document, or for
56 making the payment, including any extension granted for such filing or

1 payment, and only if such document or payment was deposited in the mail,
2 postage prepaid, properly addressed to the commissioner of finance, the
3 tax appeals tribunal, bureau, office, officer or person with which or
4 with whom the document is required to be filed or to which or to whom
5 such payment is required to be made. If any document is sent by United
6 States registered mail, such registration shall be prima facie evidence
7 that such document was delivered to the commissioner of finance, the tax
8 appeals tribunal, bureau, office, officer or person to which or to whom
9 addressed, and the date of registration shall be deemed the postmark
10 date. The commissioner of finance and, where relevant, the tax appeals
11 tribunal are authorized to provide by regulation the extent to which the
12 provisions of the preceding sentence with respect to prima facie
13 evidence of delivery and the postmark date shall apply to certified
14 mail. Except as provided in subdivision f of this section, this subdivi-
15 sion shall apply in the case of postmarks not made by the United States
16 postal service only if and to the extent provided by regulation of the
17 commissioner of finance or, where relevant, the tax appeals tribunal.
18 Any return filed electronically shall be deemed to be filed on the date
19 of issuance by the commissioner of finance of a confirmation.

20 e. When the last day prescribed under authority of this chapter,
21 including any extension of time, for performing any act falls on a
22 Saturday, Sunday or legal holiday in the state, the performance of such
23 act shall be considered timely if it is performed on the next succeeding
24 day which is not a Saturday, Sunday or legal holiday.

25 f. (1) Any reference in subdivision d of this section to the United
26 States mail shall be treated as including a reference to any delivery
27 service designated by the secretary of the treasury of the United States
28 pursuant to section seventy-five hundred two of the internal revenue
29 code and any reference in subdivision d of this section to a United
30 States postmark shall be treated as including a reference to any date
31 recorded or marked in the manner described in section seventy-five
32 hundred two of the internal revenue code by a designated delivery
33 service. If the commissioner of finance finds that any delivery service
34 designated by such secretary is inadequate for the needs of the city,
35 the commissioner of finance may withdraw such designation for purposes
36 of this title. The commissioner of finance may also designate additional
37 delivery services meeting the criteria of section seventy-five hundred
38 two of the internal revenue code for purposes of this title, or may
39 withdraw any such designation if the commissioner of finance finds that
40 a delivery service so designated is inadequate for the needs of the
41 city. Any reference in subdivision d of this section to the United
42 States mail shall be treated as including a reference to any delivery
43 service designated by the commissioner of finance and any reference in
44 subdivision d of this section to a United States postmark shall be
45 treated as including a reference to any date recorded or marked in the
46 manner described in section seventy-five hundred two of the internal
47 revenue code by a delivery service designated by the commissioner of
48 finance, provided, however, any withdrawal of designation or additional
49 designation by the commissioner of finance shall not be effective for
50 purposes of service upon the tax appeals tribunal, unless and until such
51 withdrawal of designation or additional designation is ratified by the
52 president of the tax appeals tribunal.

53 (2) Any equivalent of registered or certified mail designated by the
54 United States secretary of the treasury, or as may be designated by the
55 commissioner of finance pursuant to the same criteria used by such
56 secretary for such designations pursuant to section seventy-five hundred

1 two of the internal revenue code, shall be included within the meaning
2 of registered or certified mail as used in subdivision d of this
3 section. If the commissioner of finance finds that any equivalent of
4 registered or certified mail designated by such secretary or the commis-
5 sioner of finance is inadequate for the needs of the city, the commis-
6 sioner of finance may withdraw such designation for purposes of this
7 title, provided, however, any withdrawal of designation or additional
8 designation by the commissioner of finance shall not be effective for
9 purposes of service upon the tax appeals tribunal, unless and until such
10 withdrawal of designation or additional designation is ratified by the
11 president of the tax appeals tribunal.

12 § 11-2117 Construction and enforcement. This chapter shall be
13 construed and enforced in conformity with chapter ninety-three of the
14 laws of nineteen hundred sixty-five, as amended.

15 § 11-2118 Disposition of revenues. Except as otherwise provided, all
16 revenues resulting from the imposition of the tax under this chapter
17 shall be paid into the treasury of the city and shall be credited to and
18 deposited in the general fund of the city. Except as otherwise
19 provided, no part of such revenues may be expended unless appropriated
20 in the annual budget of the city.

21 § 11-2119 Foreclosure proceedings. Where the conveyance consists of a
22 transfer of property made as a result of an order of the court in a
23 foreclosure proceeding ordering the sale of such property, the referee
24 or sheriff effectuating the transfer shall not be liable for any inter-
25 est or penalties authorized by this chapter or chapter forty of this
26 title.

27
28 CHAPTER 22
TAX ON OWNERS OF MOTOR VEHICLES

29 § 11-2201 Definitions. When used in this chapter, the following terms
30 shall mean and include:

- 31 1. "City". The city of Staten Island.
- 32 2. "Commissioner of finance". The commissioner of finance of the city.
- 33 3. "Highway". The entire width between the boundary lines of every way
34 publicly maintained when any part thereof is open to the use of the
35 public for purposes of vehicular travel.
- 36 4. "Individual resident". One or more natural persons other than a
37 firm, copartnership, trustee or trustees conducting a business or asso-
38 ciation who, or one of whom, owns a motor vehicle registered or required
39 to be registered pursuant to section four hundred one of the vehicle and
40 traffic law, the registration fees for which are provided for by subdi-
41 vision six of such section, who, at the time he or she makes application
42 for registration or renewal thereof of such motor vehicle, or such
43 application is made on his or her behalf: (a) is domiciled in the city,
44 unless he or she maintains no permanent place of abode in the city,
45 maintains a permanent place of abode elsewhere, and during the period of
46 one year next preceding the date upon which such application is made,
47 spent in the aggregate not more than thirty days in the city; or (b) is
48 not domiciled in the city but maintains a permanent place of abode in
49 the city and, during the period of one year next preceding the date upon
50 which such application is made, spent in the aggregate more than one
51 hundred eighty-three days in the city, unless such individual is in the
52 armed forces of the United States.
- 53 5. "Motor vehicle". Every vehicle, except electrically-driven invalid
54 chairs being operated or driven by an invalid, operated or driven upon a

1 public highway by any power, other than muscular power, which includes
2 electric power obtained from overhead trolley wires, except vehicles
3 which run only upon rails or tracks.

4 6. "Other resident". Every firm, copartnership, trustee or trustees
5 conducting a business or association or a corporation, who or which
6 regularly keeps, stores, garages or maintains within the city a motor
7 vehicle owned by it which, at the time it makes application for regis-
8 tration or renewal of registration thereof, is registered or required to
9 be registered pursuant to subdivision six of section four hundred one of
10 the vehicle and traffic law.

11 7. "Person". Unless otherwise indicated, an individual, partnership,
12 society, association, joint-stock company, corporation, estate, receiv-
13 er, trustee, assignee, referee or any other person acting in a fiduciary
14 or representative capacity, whether appointed by a court or otherwise,
15 and any other form of unincorporated enterprise.

16 8. "Owner". A person, other than a lien holder, having the property in
17 or title to a vehicle. The term includes a person entitled to the use
18 and possession of a vehicle subject to a security interest in another
19 person.

20 9. "Vehicle". Every device in, upon or by which any person or property
21 is or may be transported or drawn upon a highway, except devices moved
22 by human power or used exclusively upon stationary rails or tracks.

23 10. "Leased or rented passenger motor vehicles". Any motor vehicle
24 owned by any person engaged in the business of renting or leasing motor
25 vehicles to be operated on the public highways for carrying passengers
26 registered or required to be registered pursuant to any provision of
27 section four hundred one of the vehicle and traffic law, which vehicle
28 at the time when application is made for registration, re-registration
29 or renewal thereof is regularly kept, stored, garaged or maintained in
30 the city, including such vehicles which have been rented and leased by
31 the owner and are in possession of lessees when such application for
32 registration, re-registration or renewal is made.

33 11. "Tax appeals tribunal." The tax appeals tribunal established by
34 section one hundred sixty-eight of the charter of the preceding munici-
35 pality as it existed January first, nineteen hundred ninety-four.

36 § 11-2202 Imposition of tax. Notwithstanding the provisions of
37 section four hundred of the vehicle and traffic law and of subdivision
38 ten of section four hundred one of the vehicle and traffic law to the
39 contrary, a tax of fifteen dollars per annum is hereby imposed:

40 1. With respect to each motor vehicle registered or required to be
41 registered pursuant to subdivision six of section four hundred one of
42 the vehicle and traffic law:

43 a. Upon each individual resident for each such motor vehicle regis-
44 tered or for which registration is renewed, or required to be registered
45 or renewed by him or her; and

46 b. Upon each other resident of each such motor vehicle regularly
47 kept, stored, garaged or maintained in the city and registered or
48 required to be registered or renewed by such other resident; and

49 2. With respect to each leased or rented passenger motor vehicle,
50 upon the owner thereof.

51 § 11-2203 Exemptions. The tax imposed by this chapter shall not be
52 imposed upon:

53 (1) owners of motor vehicles, the registration fees for which are or
54 may be prescribed, governed or established by subdivisions seven, except
55 for leased or rented passenger vehicles, eight, twelve, thirteen,

1 sixteen of section four hundred one, articles fifteen and sixteen, or
2 section four hundred twenty of the vehicle and traffic law;

3 (2) any owner to whom the provisions of the vehicle and traffic law
4 relative to registration and equipment of motor vehicles are made inap-
5 plicable by the provisions of article three of such law, for the period
6 of such inapplicability;

7 (3) the state of New York, or any of its agencies, instrumentalities,
8 public corporations, including a public corporation created pursuant to
9 agreement or compact with another state or the Dominion of Canada, or
10 political subdivision;

11 (4) the United States of America, and any of its agencies and instru-
12 mentalities insofar as it is immune from taxation;

13 (5) the United Nations or other international organizations of which
14 the United States of America is a member;

15 (6) any corporation, or association, or trust, or community chest,
16 fund or foundation, organized and operated exclusively for religious,
17 charitable, or educational purposes, or for the prevention of cruelty to
18 children or animals, and no part of the net earnings of which inures to
19 the benefit of any private shareholder or individual and no substantial
20 part of the activities of which is carrying on propaganda, or otherwise
21 attempting to influence legislation; provided, however, that nothing in
22 this subdivision shall include an organization operated for the primary
23 purpose of carrying on a trade or business for profit, whether or not
24 all of its profits are payable to one or more organizations described in
25 this subdivision.

26 § 11-2204 Payment of tax and evidence of tax payment. Every owner of
27 a motor vehicle subject to tax under this chapter shall pay the tax
28 thereon to the commissioner of motor vehicles of the state of New York
29 on or before the date upon which he or she registers or renews his or
30 her registration thereof or is required to register or renew his or her
31 registration thereof pursuant to section four hundred one of the vehicle
32 and traffic law.

33 Notwithstanding the provisions of section four hundred of the vehicle
34 and traffic law to the contrary, the payment of such tax shall be a
35 condition precedent to the registration or renewal thereof of such motor
36 vehicle and to the issuance of any certificate of registration and
37 plates or removable tag specified in subdivision three of section four
38 hundred one and in sections four hundred three and four hundred four of
39 the vehicle and traffic law, and no such certificate of registration,
40 plates or tag shall be issued unless such tax has been paid. The
41 commissioner of motor vehicles shall not issue a registration certifi-
42 cate for any motor vehicle for which the registrant's address is with-
43 in any such city, except upon proof, in a form approved by the commis-
44 sioner of motor vehicles, that such tax has been paid, or is not due,
45 with respect to such motor vehicle. The commissioner of motor vehicles,
46 upon the payment of such tax or upon the application of any person
47 exempt therefrom, shall furnish to each taxpayer paying the tax a
48 receipt for such tax and to each such taxpayer or exempt person a state-
49 ment, document or other form approved by the commissioner of motor vehi-
50 cles, showing that such tax has been paid or is not due, with respect to
51 such motor vehicle.

52 § 11-2205 Returns. a. At the time the payment of the tax imposed by
53 this chapter becomes due, every person subject to tax under this chapter
54 shall file a return with the commissioner of motor vehicles in form and
55 containing such information as may be prescribed by such commissioner of
56 motor vehicles. The taxpayer's application for registration or the

1 renewal of registration shall constitute the return required under this
2 chapter, unless the commissioner of motor vehicles, by regulation, shall
3 otherwise provide.

4 b. Returns shall be preserved for three years and thereafter until
5 the commissioner of motor vehicles permits them to be destroyed.

6 c. The commissioner of motor vehicles may require amended returns or
7 certificates of facts to be filed within twenty days after notice and to
8 contain the information specified in the notice. Any such certificate
9 shall be deemed to be part of the return required to be filed.

10 d. If a return required by this chapter is not filed or if a return
11 when filed is incorrect or insufficient on its face the commissioner of
12 motor vehicles or the commissioner of finance if designated as his or
13 her agent shall take the necessary steps to enforce the filing of such a
14 return or of a corrected return.

15 § 11-2206 Determination of tax. If a return required by this chapter
16 is not filed or if a return when filed is incorrect or insufficient, or
17 if a tax or any part thereof due pursuant to this chapter be not paid
18 when required, the amount of tax due shall be determined by the commis-
19 sioner of motor vehicles or by the commissioner of finance if designated
20 as his or her agent, from such information as may be obtainable, includ-
21 ing motor vehicle registration with the department of motor vehicles of
22 the state of New York or other factors. Notice of such determination
23 shall be given to the person liable for the tax. Such a determination by
24 the commissioner of motor vehicles shall finally and irrevocably fix the
25 tax unless the person against whom it is assessed, within ninety days
26 after the giving of notice of such determination, shall apply to the
27 commissioner of motor vehicles for a hearing, or unless such commis-
28 sioner of his or her own motion shall redetermine the same. If the commis-
29 sioner of finance is designated as the agent of the commissioner of
30 motor vehicles, such a determination by the commissioner of finance
31 shall finally and irrevocably fix the tax unless the person against whom
32 it is assessed, within ninety days after the giving of such determi-
33 nation, or, if the commissioner of finance has established a concil-
34 iation procedure pursuant to section 11-124 of the code of the preceding
35 municipality and the taxpayer has requested a conciliation conference in
36 accordance therewith, within ninety days from the mailing of a concil-
37 iation decision or the date of the commissioner's confirmation of the
38 discontinuance of the conciliation proceeding, both (1) serves a peti-
39 tion upon the commissioner of finance and (2) applies to the tax appeals
40 tribunal for a hearing by filing a petition, or unless the commissioner
41 of finance of his or her own motion shall redetermine the same. A hear-
42 ing following a petition to the tax appeals tribunal and any appeal to
43 the tax appeals tribunal sitting en banc from the decision rendered in
44 such hearing shall be conducted in the manner and subject to the
45 requirements prescribed by the tax appeals tribunal pursuant to sections
46 one hundred sixty-eight through one hundred seventy-two of the charter
47 of the preceding municipality as it existed January first, nineteen
48 hundred ninety-four. After such hearing by the commissioner of motor
49 vehicles or the tax appeals tribunal, the commissioner of motor vehi-
50 cles, if he or she holds the hearing, or the tax appeals tribunal if the
51 tax appeals tribunal holds the hearing, shall give notice of the deter-
52 mination or decision to the person against whom the tax is assessed and
53 in the case of a tax appeals tribunal decision, to the commissioner of
54 finance. Such determination by the commissioner of motor vehicles, or a
55 decision of the tax appeals tribunal sitting en banc shall be reviewable
56 for error, illegality or unconstitutionality or any other reason whatso-

1 ever by a proceeding under article seventy-eight of the civil practice
2 law and rules if application therefor is made to the supreme court by
3 the person against whom the tax was assessed within four months after
4 the giving of the notice of such determination or tax appeals tribunal
5 decision. A proceeding under article seventy-eight of the civil prac-
6 tice law and rules shall not be instituted by a taxpayer unless (a) the
7 amount of any tax sought to be reviewed, with penalties and interest
8 thereon, if any, shall be first deposited with the commissioner of motor
9 vehicles and there shall be filed with the commissioner of motor vehi-
10 cles an undertaking, issued by a surety company authorized to transact
11 business in this state and approved by the superintendent of insurance
12 of this state as to solvency and responsibility, in such amount as a
13 justice of the supreme court shall approve, to the effect that if such
14 proceeding be dismissed or the tax confirmed, the taxpayer will pay all
15 costs and charges which may accrue in the prosecution of the proceeding;
16 or (b) at the option of the taxpayer such undertaking filed with the
17 commissioner of motor vehicles may be in a sum sufficient to cover the
18 taxes, penalties and interest thereon stated in such determination or
19 decision, plus the costs and charges which may accrue against it in the
20 prosecution of the proceeding, in which event the taxpayer shall not be
21 required to deposit such taxes, penalties and interest as a condition
22 precedent to the application.

23 § 11-2207 Refunds for certain unused registrations. Whenever any fee
24 or portion of a fee paid for the registration of a motor vehicle under
25 the provisions of the vehicle and traffic law is refunded pursuant to
26 the provisions of subdivision one of section four hundred twenty-eight
27 of the vehicle and traffic law, the amount of any tax paid pursuant to
28 this chapter upon such registration shall also be refunded by the
29 commissioner.

30 § 11-2208 Refunds. a. In the manner provided in this section the
31 commissioner of motor vehicles shall refund or credit, without interest,
32 any tax, penalty or interest erroneously, illegally or unconstitu-
33 tionally collected or paid if application for such refund shall be made
34 within one year from the payment thereof to the commissioner of motor
35 vehicles or to the commissioner of finance if designated as his or her
36 agent. Whenever a refund is made or denied, the reasons therefor shall
37 be stated in writing by the commissioner of motor vehicles or by the
38 commissioner of finance, as the case may be, who in lieu of any refund,
39 may allow credit therefor on payments due from the applicant.

40 b. (1) If the commissioner of motor vehicles has not designated the
41 commissioner of finance as his or her agent, application for a refund or
42 credit made as provided under this section shall be deemed an applica-
43 tion for a revision of any tax, penalty or interest complained of and
44 the commissioner of motor vehicles shall hold a hearing and receive
45 evidence with respect thereto. After such hearing, the commissioner of
46 motor vehicles shall give notice of the determination of such applica-
47 tion to the applicant who shall be entitled to review such determination
48 by a proceeding pursuant to article seventy-eight of the civil practice
49 law and rules, provided such proceeding is instituted within four months
50 after the giving of notice of such determination, and provided that a
51 final determination of tax due was not previously made. Such a proceed-
52 ing shall not be instituted unless an undertaking is filed with the
53 commissioner of motor vehicles in such amount and with such sureties as
54 a justice of the supreme court shall approve, to the effect that if such
55 proceeding be dismissed or the tax confirmed, the petitioner will pay

1 all costs and charges which may accrue in the prosecution of such
2 proceeding.

3 (2) If the commissioner of motor vehicles has designated the commis-
4 sioner of finance as his or her agent, a determination of the commis-
5 sioner of finance denying a refund or credit pursuant to subdivision a
6 of this section shall be final and irrevocable unless the applicant for
7 such refund or credit, within ninety days from the mailing of notice of
8 such determination, or, if the commissioner of finance has established a
9 conciliation procedure pursuant to section 11-124 of the code of the
10 preceding municipality and the applicant has requested a conciliation
11 conference in accordance therewith, within ninety days from the mailing
12 of a conciliation decision or the date of the commissioner's confirma-
13 tion of the discontinuance of the conciliation proceeding, both (1)
14 serves a petition upon the commissioner of finance and (2) files a peti-
15 tion with the tax appeals tribunal for a hearing. Such petition for a
16 refund or credit, made as provided under this section, shall be deemed
17 an application for a revision of any tax, penalty or interest complained
18 of. Such hearing and any appeal to the tax appeals tribunal sitting en
19 banc from the decision rendered in such hearing shall be conducted in
20 the manner and subject to the requirements prescribed by the tax appeals
21 tribunal pursuant to sections one hundred sixty-eight through one
22 hundred seventy-two of the charter of the preceding municipality as it
23 existed January first, nineteen hundred ninety-four. After such hearing,
24 the tax appeals tribunal shall give notice of its decision to the appli-
25 cant and to the commissioner of finance. The applicant shall be entitled
26 to institute a proceeding pursuant to article seventy-eight of the civil
27 practice law and rules to review a decision of the tax appeals tribunal
28 sitting en banc if application to the supreme court be made therefor
29 within four months after the giving of notice of such decision, and
30 provided, in the case of an application by a taxpayer, that a final
31 determination of tax due was not previously made. Such a proceeding
32 shall not be instituted by a taxpayer unless an undertaking shall first
33 be filed with the commissioner of motor vehicles, in such amount and
34 with such sureties as a justice of the supreme court shall approve, to
35 the effect that if such proceeding be dismissed or the tax confirmed,
36 the taxpayer will pay all costs and charges which may accrue in the
37 prosecution of such proceeding.

38 c. A person shall not be entitled to a revision, refund or credit
39 under this section of a tax, interest or penalty which has been deter-
40 mined to be due pursuant to the provisions of section 11-2206 of this
41 chapter where he or she has had a hearing or an opportunity for a hear-
42 ing, as provided in such section, or has failed to avail himself or
43 herself of the remedies provided in such section. No refund or credit
44 shall be made of a tax, interest or penalty paid after a determination
45 made pursuant to section 11-2206 of this chapter, unless it be found
46 that such determination was erroneous, illegal or unconstitutional or
47 otherwise improper after a hearing, or on his or her own motion, by the
48 commissioner of motor vehicles or after a hearing by the tax appeals
49 tribunal, or on his or her own motion by the commissioner of finance, as
50 the case may be, or in a proceeding under article seventy-eight of the
51 civil practice law and rules, pursuant to the provisions of said
52 section, in which event refund or credit without interest shall be made
53 of the tax, interest or penalty found to have been overpaid.

54 § 11-2209 Reserves. In cases where a taxpayer has applied for a
55 refund and has instituted a proceeding under article seventy-eight of
56 the civil practice law and rules to review a determination adverse to

1 such taxpayer on his or her application for refund, the commissioner of
2 motor vehicles shall set up appropriate reserves to meet any decision
3 adverse to the city.

4 § 11-2210 Remedies exclusive. The remedies provided by sections
5 11-2206 and 11-2208 of this chapter shall be the exclusive remedies
6 available to any person for the review of tax liability imposed by this
7 chapter; and no determination or proposed determination of tax or deter-
8 mination on any application for refund by the commissioner of motor
9 vehicles or by the commissioner of finance, nor any decision by the tax
10 appeals tribunal or any of its administrative law judges, shall be
11 enjoined or reviewed by an action for declaratory judgment, an action
12 for money had and received or by any action or proceeding other than, in
13 the case of a final determination by the commissioner of motor vehicles
14 or a decision by the tax appeals tribunal sitting en banc, a proceeding
15 in the nature of a certiorari proceeding under article seventy-eight of
16 the civil practice law and rules; provided, however, that a taxpayer may
17 proceed by declaratory judgment if he or she institutes suit within
18 thirty days after a deficiency assessment is made and pays the amount of
19 the deficiency assessment to the commissioner of motor vehicles prior to
20 the institution of such suit and posts a bond for costs as provided in
21 section 11-2206 of this chapter.

22 § 11-2211 Proceedings to recover tax. a. Whenever any person shall
23 fail to pay any tax, penalty or interest imposed by this chapter, the
24 corporation counsel, upon the request of the commissioner of motor vehi-
25 cles or of the commissioner of finance if designated as his or her
26 agent, shall bring or cause to be brought an action to enforce the
27 payment of the same on behalf of the city of Staten Island in any court
28 of the state of New York or of any other state of the United States.
29 However, if in his or her discretion the commissioner of motor vehicles,
30 or the commissioner of finance if designated as his or her agent,
31 believes that any such person subject to the provisions of this chapter
32 is about to cease business, leave the state or remove or dissipate the
33 assets out of which the tax or penalty might be satisfied, and that any
34 such tax or penalty will not be paid when due, he or she may declare
35 such tax or penalty to be immediately due and payable and may issue a
36 warrant immediately.

37 b. As an additional or alternate remedy, the commissioner of motor
38 vehicles, or the commissioner of finance if designated as his or her
39 agent, may issue a warrant, directed to the city sheriff commanding him
40 or her to levy upon and sell the real and personal property of the
41 person liable for the tax which may be found within the city, for the
42 payment of the amount thereof, with any penalty and interest, and the
43 cost of executing the warrant, and to return such warrant to the person
44 who issued it and to pay to him or her the money collected by virtue
45 thereof within sixty days after the receipt of such warrant. The city
46 sheriff shall within five days after the receipt of the warrant file
47 with the county clerk a copy thereof, and thereupon such clerk shall
48 enter in the judgment docket the name of the person mentioned in the
49 warrant and the amount of the tax, penalty and interest for which the
50 warrant is issued and the date when such copy is filed. Thereupon the
51 amount of such warrant so docketed shall become a lien upon the title to
52 and the interest in real and personal property of the person against
53 whom the warrant is issued. The city sheriff shall then proceed upon
54 the warrant in the same manner, and with like effect, as that provided
55 by law in respect to executions issued against property upon judgments
56 of a court of record and for services in executing the warrant such

1 sheriff shall be entitled to the same fees, which he or she may collect
2 in the same manner. In the discretion of the commissioner of motor
3 vehicles, or of the commissioner of finance if designated as his or her
4 agent, a warrant of like terms, force and effect may be issued and
5 directed to an officer or employee of the department of finance of the
6 city, and in the execution thereof such officer or employee shall have
7 all the powers conferred by law upon sheriffs, but shall be entitled to
8 no fee or compensation in excess of the actual expenses paid in the
9 performance of such duty. If a warrant is returned not satisfied in
10 full, the commissioner of motor vehicles or the commissioner of finance,
11 as the case may be, may from time to time issue new warrants and shall
12 also have the same remedies to enforce the amount due thereunder as if
13 he or she had recovered judgment therefor and execution thereon had been
14 returned unsatisfied.

15 c. The commissioner of finance, if he or she finds that the interests
16 of the city will not thereby be jeopardized, and upon such conditions as
17 the commissioner of finance may require, may release any property from
18 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
19 tions to tax, penalties and interest filed pursuant to subdivision b of
20 this section, and such release or vacating of the warrant may be
21 recorded in the office of any recording officer in which such warrant
22 has been filed. The clerk shall thereupon cancel and discharge as of the
23 original date of docketing the vacated warrant.

24 § 11-2212 General powers of the commissioner of motor vehicles. In
25 addition to the powers granted to the commissioner of motor vehicles in
26 this chapter, he or she is hereby authorized and empowered:

27 1. To make, adopt and amend rules and regulations appropriate to the
28 carrying out of this chapter and the purposes thereof;

29 2. For cause shown, to remit penalties; and to compromise disputed
30 claims in connection with the taxes imposed under this chapter;

31 3. To request information concerning motor vehicles and persons
32 subject to the provisions of this chapter from the department of motor
33 vehicles of any other state or the treasury department of the United
34 States, or any city or county of the state of New York; and to afford
35 such information to such other state, treasury department, city or coun-
36 ty, any provision of this chapter to the contrary notwithstanding;

37 4. To delegate his or her functions under this section to a deputy
38 commissioner in the department of motor vehicles or any employee or
39 employees of his or her department or to any county clerk or other offi-
40 cer who acts as the agent of such commissioner in the registration of
41 motor vehicles;

42 5. To prescribe methods for determining the tax;

43 6. To require all persons owning motor vehicles subject to tax to
44 keep such records as he or she may prescribe and to furnish such infor-
45 mation upon his or her request;

46 7. To request the police department of the city to assist in the
47 enforcement of the provisions of this chapter.

48 § 11-2213 Administration of oaths and compelling testimony. a. The
49 commissioner of motor vehicles or his or her employees or agents duly
50 designated and authorized by such commissioner, and the tax appeals
51 tribunal, shall have power to administer oaths and take affidavits in
52 relation to any matter or proceeding in the exercise of the powers and
53 duties under this chapter. The commissioner of motor vehicles, or the
54 commissioner of finance if designated as his or her agent or the tax
55 appeals tribunal, shall have the power to subpoena and require the
56 attendance of witnesses and the production of books, papers and docu-

1 ments to secure information pertinent to the performance of the duties
2 of the commissioner of motor vehicles, the commissioner of finance or
3 the tax appeals tribunal pursuant to this chapter and of the enforcement
4 of this chapter and to examine them in relation thereto, and to issue
5 commissions for the examination of witnesses who are out of the state or
6 unable to attend before him or her or the tax appeals tribunal or
7 excused from attendance.

8 b. A justice of the supreme court either in court or at chambers shall
9 have power summarily to enforce by proper proceedings the attendance and
10 testimony of witnesses and production and examination of books, papers
11 and documents called for by the subpoena of the commissioner of motor
12 vehicles, or, if the commissioner of finance is designated as his or her
13 agent under this chapter, of the commissioner of finance and the tax
14 appeals tribunal.

15 c. Cross-reference; criminal penalties. For failure to obey subpoenas
16 or for testifying falsely, see section 11-4007 of this title; for
17 supplying false or fraudulent information, see section 11-4009 of this
18 title.

19 d. The officers who serve the summons or subpoena of the commissioner
20 of motor vehicles, or the commissioner of finance if designated as his
21 or her agent, or the tax appeals tribunal if the commissioner of finance
22 is designated as the agent of the commissioner of motor vehicles, and
23 witnesses attending in response thereto shall be entitled to the same
24 fees as are allowed to officers and witnesses in civil cases in courts
25 of record, except as otherwise provided in this section. Such officers
26 shall be the city sheriff and his or her duly appointed deputies, or any
27 officers or employees of the department of motor vehicles designated by
28 the commissioner of motor vehicles to serve such process or any officers
29 or employees of the department of finance of the city designated by the
30 commissioner of finance to serve such process or any officers or employ-
31 ees of the tax appeals tribunal designated to serve such process.

32 § 11-2214 Penalties and interest. a. Any person failing to file a
33 return or to pay any tax or any portion thereof within the time required
34 by this chapter shall be subject to a penalty of five times the amount
35 of the tax due, plus interest of five percent of such tax for each month
36 of delay or fraction thereof, but the commissioner of motor vehicles, or
37 the commissioner of finance if designated as his or her agent, if satis-
38 fied that the delay was excusable, may remit all or any part of such
39 penalty, but not interest at the rate of six percent per year. Penal-
40 ties and interest shall be paid and disposed of in the same manner as
41 other revenues under this chapter. Unpaid penalties and interest may be
42 enforced in the same manner as the tax imposed by this chapter.

43 b. The certificate of the commissioner of motor vehicles or of the
44 commissioner of finance if designated as his or her agent to the effect
45 that a tax has not been paid, or that a return required by this chapter
46 has not been filed, or that information has not been supplied pursuant
47 to the provisions of this chapter shall be presumptive evidence thereof.

48 c. Cross-reference: For criminal penalties, see chapter forty of this
49 title.

50 § 11-2215 Returns to be secret. a. Except in accordance with proper
51 judicial order or as otherwise provided by law, it shall be unlawful for
52 the commissioner of motor vehicles, any officer or employee of the
53 department of motor vehicles, the commissioner of finance, any officer
54 or employee of the department of finance, the tax appeals tribunal, any
55 commissioner or employee of such tribunal, any agent of the commissioner
56 of motor vehicles, or any person who, pursuant to this section, is

1 permitted to inspect any return or to whom a copy, an abstract or
2 portion of any return is furnished, or to whom any information contained
3 in any return is furnished to divulge or make known in any manner any
4 information contained in or relating to any return provided for by this
5 chapter. The officers charged with the custody of such returns shall
6 not be required to produce any of them or evidence of anything contained
7 in them in any action or proceeding in any court, except on behalf of
8 the commissioner of motor vehicles or the commissioner of finance in an
9 action or proceeding under the provisions of this chapter, or on behalf
10 of any party to an action or proceeding under the provisions of this
11 chapter when the returns or facts shown thereby are directly involved in
12 such action or proceeding, in either of which events the court may
13 require the production of, and may admit in evidence, so much of said
14 returns or of the facts shown thereby, as are pertinent to the action or
15 proceeding and no more. The commissioner of motor vehicles may, never-
16 theless, publish a copy or a summary of any determination or decision
17 rendered after a formal hearing held pursuant to section 11-2206 or
18 11-2208 of this chapter. Nothing under this section shall be construed
19 to prohibit the delivery to a person or his or her duly authorized
20 representative of a certified copy of any return filed by him or her
21 pursuant to this chapter, or of the receipt, document or other form
22 issued pursuant to section 11-2204 of this chapter, or a duplicate copy
23 thereof; nor to prohibit the delivery of such a certified copy of such
24 return or of any information contained in or relating thereto, to the
25 United States of America or any department thereof, the state of New
26 York or any department thereof, the city of Staten Island or any depart-
27 ment thereof provided the same is required for official business; nor to
28 prohibit the inspection for official business of such returns by the
29 corporation counsel or other legal representatives of the city or by the
30 district attorney of Richmond county; nor to prohibit the publication of
31 statistics so classified as to prevent the identification of particular
32 returns or items thereof.

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

38 (2) Cross-reference: For criminal penalties, see chapter forty of this
39 title.

40 c. This section shall be deemed a state statute for purposes of para-
41 graph (a) of subdivision two of section eighty-seven of the public offi-
42 cers law.

43 d. Notwithstanding anything in subdivision a of this section to the
44 contrary, if a taxpayer has petitioned the tax appeals tribunal for
45 administrative review as provided in section one hundred seventy of the
46 charter of the preceding municipality as it existed January first, nine-
47 teen hundred ninety-four, the commissioner of finance shall be author-
48 ized to present to the tax appeals tribunal any report or return of such
49 taxpayer, or any information contained therein or relating thereto,
50 which may be material or relevant to the proceeding before the tax
51 appeals tribunal. The tax appeals tribunal shall be authorized to
52 publish a copy or a summary of any decision rendered pursuant to section
53 one hundred seventy-one of the charter of the preceding municipality as
54 it existed January first, nineteen hundred ninety-four.

55 § 11-2216 Notices and limitations of time. a. Any notice authorized or
56 required under the provisions of this chapter may be given by mailing

1 the same to the person for whom it is intended in a postpaid envelope
2 addressed to such person at the address given in the last return filed
3 by him or her pursuant to the provisions of this chapter, in any appli-
4 cation made by him or her, or in any application for registration made
5 by him or her pursuant to section four hundred one of the vehicle and
6 traffic law or, if no return has been filed or application made, then to
7 such address as may be obtainable. The mailing of such notice shall be
8 presumptive evidence of the receipt of the same by the person to whom
9 addressed. Any period of time which is determined according to the
10 provisions of this chapter by the giving of notice shall commence to run
11 from the date of mailing of such notice.

12 b. The provisions of the civil practice law and rules or any other law
13 relative to limitations of time for the enforcement of a civil remedy
14 shall not apply to any proceeding or action taken by the commissioner of
15 motor vehicles, or the commissioner of finance if designated as his or
16 her agent, to levy, appraise, assess, determine or enforce the
17 collection of any tax or penalty provided by this chapter. However,
18 except in the case of a wilfully false or fraudulent return with intent
19 to evade the tax, no assessment of additional tax shall be made after
20 the expiration of more than three years from the date of the filing of a
21 return; provided, however, that where no return has been filed as
22 provided by law the tax may be assessed at any time.

23 c. Where, before the expiration of the period prescribed under this
24 section for the assessment of an additional tax, a taxpayer has
25 consented in writing that such period be extended, the amount of such
26 additional tax may be determined at any time within such extended peri-
27 od. The period so extended may be further extended by subsequent
28 consents in writing made before the expiration of the extended period.

29 d. If any return, claim, statement, notice, application, or other
30 document required to be filed, or any payment required to be made, with-
31 in a prescribed period or on or before a prescribed date under authority
32 of any provision of this title is, after such period or such date,
33 delivered by United States mail to the commissioner of motor vehicles,
34 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
35 cer or person with which or with whom such document is required to be
36 filed, or to which or to whom such payment is required to be made, the
37 date of the United States postmark stamped on the envelope shall be
38 deemed to be the date of delivery. This subdivision shall apply only if
39 the postmark date falls within the prescribed period or on or before the
40 prescribed date for the filing of such document, or for making the
41 payment, including any extension granted for such filing or payment, and
42 only if such document or payment was deposited in the mail, postage
43 prepaid, properly addressed to the commissioner of motor vehicles,
44 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
45 cer or person with which or with whom the document is required to be
46 filed or to which or to whom such payment is required to be made. If any
47 document is sent by United States registered mail, such registration
48 shall be prima facie evidence that such document was delivered to the
49 commissioner of motor vehicles, commissioner of finance, the tax appeals
50 tribunal, bureau, office, officer or person to which or to whom
51 addressed, and the date of registration shall be deemed the postmark
52 date. The commissioner of motor vehicles is authorized to provide by
53 regulation the extent to which, such provisions with respect to prima
54 facie evidence of delivery and the postmark date, shall apply to certi-
55 fied mail. This subdivision shall apply in the case of postmarks not

1 made by the United States Postal Service only if and to the extent
2 provided by regulation of the commissioner of motor vehicles.

3 e. When the last day prescribed under authority of this title, includ-
4 ing any extension of time, for performing any act falls on a Saturday,
5 Sunday or legal holiday in the state of New York, the performance of
6 such act shall be considered timely if it is performed on the next
7 succeeding day which is not a Saturday, Sunday or legal holiday.

8 § 11-2217 Commissioner of finance as agent. The commissioner of motor
9 vehicles is hereby authorized to designate the commissioner of finance
10 as his or her agent to exercise any or all of his or her functions and
11 powers specified or provided for in subdivision (d) of section 11-2205
12 and in sections 11-2206, 11-2208, 11-2211, 11-2213, 11-2214 and 11-2216
13 of this chapter. Where the commissioner of finance has been so desig-
14 nated as agent, the commissioner of finance, in addition to the powers
15 elsewhere granted to him or her in this chapter, is hereby authorized
16 and empowered:

17 1. To delegate such functions and powers to a commissioner or deputy
18 commissioner in the department of finance or to any employee or employ-
19 ees of the department of finance;

20 2. For cause shown, to remit penalties and to compromise disputed
21 claims in connection with the taxes hereby imposed;

22 3. To request information concerning motor vehicles and persons
23 subject to the provisions of this chapter from the department of motor
24 vehicles of any other state or the treasury department of the United
25 States, or any city or county of the state of New York; and to afford
26 such information to such other state, treasury department, city or coun-
27 ty, any provision of this chapter to the contrary notwithstanding;

28 4. To request the police department of the city to assist in the
29 enforcement of the provisions of this chapter.

30 § 11-2218 Agreement between commissioner of finance and commissioner
31 of motor vehicles. The commissioner of finance is hereby authorized and
32 empowered to enter into an agreement with the commissioner of motor
33 vehicles to govern the administration and collection of the taxes
34 imposed by this chapter, which agreement shall provide for the exclusive
35 method of collection of such taxes, custody and remittal of the proceeds
36 of such tax; for the payment by the city of the reasonable expenses
37 incurred by the department of motor vehicles in collecting and adminis-
38 tering such tax; and for the audit, upon request of the commissioner of
39 finance or his or her delegate, of the accuracy of the payments,
40 distributions and remittances to the commissioner of finance pursuant to
41 the provisions of this chapter, to be conducted at a time agreed upon by
42 the state comptroller and to be allowed not more frequently than once in
43 each calendar year. Such agreement shall have the force and effect of a
44 rule or regulation of the commissioner of motor vehicles, and shall be
45 filed and published in accordance with any statutory requirements relat-
46 ing thereto.

47 § 11-2219 Notification to corporation counsel. The commissioner of
48 motor vehicles shall promptly notify the corporation counsel of the city
49 of any litigation instituted against him or her which challenges the
50 constitutionality or validity of any provision of this chapter, or of
51 the enabling act pursuant to which it was adopted, or which attempts to
52 limit or question the applicability of either such law, and such notifi-
53 cation shall include a copy of the papers served upon him or her.

54 § 11-2220 Construction and enforcement. This chapter shall be
55 construed and enforced in conformity with subdivisions (g) and (h) of

1 section twelve hundred one of the tax law, pursuant to which it is
2 enacted.

3 § 11-2221 Disposition of revenues. All revenues resulting from the
4 imposition of the tax under this chapter shall be paid into the treasury
5 of the city and shall be credited to and deposited in the general fund
6 of the city, but no part of such revenues may be expended unless appro-
7 priated in the annual budget of the city.

8 CHAPTER 23-A
9 ENHANCED 911 TELEPHONE SURCHARGE

10 § 11-2321 Short title. This chapter shall be known and may be cited as
11 the "enhanced 911 telephone surcharge act."

12 § 11-2322 Definitions. When used in this chapter the following terms
13 shall mean:

14 (a) "E911 system" means an enhanced emergency telephone service which
15 automatically connects a person dialing the digits 9-1-1 to the answer-
16 ing point established within the city of Staten Island police depart-
17 ment, and which shall include, but not be limited to, selective routing,
18 automatic number identification and automatic location identification.

19 (b) "Lifeline" means a discounted or low-priced telephone service
20 available to eligible low-income residential customers.

21 (c) "Access line" means a communications circuit that connects a
22 customer location to a facility housing the switching system and related
23 equipment that provides telephone service.

24 (d) "911 service area" means the area within the geographic boundaries
25 of the city of Staten Island.

26 (e) "Municipality" means any New York city agency, or any public bene-
27 fit corporation, local development corporation or other governmental
28 entity the majority of whose members or governing body is appointed by a
29 city official.

30 (f) "Public safety agency" means a public safety agency as defined in
31 subdivision five of section three hundred one of the county law.

32 (g) "Service supplier" means a service supplier as defined in subdivi-
33 sion seven of section three hundred one of the county law that provides
34 service within the 911 service area.

35 (h) "System costs" means the costs associated with obtaining and main-
36 taining the telecommunication equipment, all operations and maintenance
37 costs and the telephone services costs necessary to establish and
38 provide an E911 system.

39 (i) "Voice over internet protocol service" or "VOIP service" shall
40 mean any service that (1) enables real-time, two-way voice communi-
41 cations; (2) requires a broadband connection from the user's location;
42 (3) requires internet protocol compatible customer premises equipment
43 (CPE); and (4) permits users generally to receive calls that originate
44 on the public switched telephone network and to terminate calls to the
45 public switched telephone network.

46 § 11-2323 Establishment of surcharge for E911 system. (a) In accord-
47 ance with the provisions of article six of the county law, as amended,
48 there is hereby established a surcharge of one dollar per telephone
49 access line, or equivalent, per month on the customers of every service
50 supplier within the city of New York.

51 (b) The surcharge imposed by subdivision (a) of this section shall be
52 used to pay for the costs associated with obtaining, operating and main-
53 taining the telecommunication equipment and telephone services needed to

1 provide an enhanced 911 emergency telephone system to serve the city of
2 New York.

3 (c) All service suppliers that provide local access service within the
4 911 service area in the city of New York shall begin to add the monthly
5 surcharge of one dollar per telephone access line per month as provided
6 in subdivision (a) of this section to all service bills no later than
7 the forty-fifth day after the effective date of the local law that
8 increased such surcharge to one dollar per telephone access line per
9 month. Notwithstanding the provisions of this subdivision, all provid-
10 ers of voice over internet protocol service that provide such service
11 within the 911 service area shall begin to add the monthly surcharge of
12 one dollar per telephone access line, or equivalent, per month as
13 provided in subdivision (a) of this section to all service bills no
14 later than September fifth, two thousand ten.

15 § 11-2324 Application; limitations; exemptions. (a) The surcharge
16 established pursuant to the provisions of section 11-2323 of this chap-
17 ter shall be imposed on a per access line basis on all current bills
18 rendered for local exchange access service within the 911 service area.

19 (b) No such surcharge shall be imposed upon:

20 (1) more than seventy-five exchange access lines per customer per
21 location;

22 (2) any lifeline customers of a local telephone service supplier; or

23 (3) a public safety agency; or

24 (4) any municipality, as defined in subdivision (e) of section 11-2322
25 of this chapter.

26 § 11-2325 Collection of surcharge. (a) The appropriate service suppli-
27 er or suppliers serving the city of Staten Island 911 service area shall
28 act as collection agents for the city and shall remit the funds
29 collected as the surcharge to the commissioner of finance each month.
30 Such funds shall be remitted no later than thirty days after the last
31 business day of such period.

32 (b) The service supplier shall be entitled to retain as an administra-
33 tive fee an amount equal to two per cent of its collections of the
34 surcharge.

35 (c) The surcharge required to be collected by the service supplier
36 shall be added to and stated separately in its billings to the customer.

37 (d) The service supplier shall annually provide to the commissioner of
38 finance an accounting of the surcharge amounts billed and collected.

39 § 11-2326 Liability for surcharge. (a) Each service supplier who is
40 subject to the provisions of this chapter shall be liable to the city
41 for the surcharge until it has been paid to the city, except that
42 payment to a service supplier is sufficient to relieve the customer from
43 further liability for such surcharge.

44 (b) The service supplier customer shall have no obligation to take any
45 legal action to enforce the collection of any surcharge. However, when-
46 ever the service supplier remits the funds collected as the surcharge to
47 the city, it shall also provide the city with the name and address of
48 any customer refusing or failing to pay the surcharge imposed by this
49 chapter and shall state the amount of such surcharge remaining unpaid.

50 § 11-2327 System revenues; adjustment of surcharge. (a) All surcharge
51 monies remitted to the commissioner of finance by a service supplier and
52 all other monies dedicated to the payment of system costs from whatever
53 source derived or received by the city of Staten Island shall be
54 expended only upon authorization of the council, and only for payment of
55 system costs as permitted by this chapter. The finance commissioner and
56 the director of the office of management and budget shall separately

1 account for and keep adequate records of the amount and source of all
2 such revenues and of the amount and object or purpose of all expendi-
3 tures thereof.

4 (b) If at the end of any fiscal year the total amount of all such
5 revenues exceeds the amount necessary for payment of system costs in
6 such fiscal year, such excess shall be reserved and carried over for the
7 payment of system costs in the following fiscal year. However, if at the
8 end of any fiscal year in conformance with applicable law, such E911
9 reserved fund balance exceeds an amount equal to five per cent of that
10 necessary for the payment of system costs in such fiscal year, the coun-
11 cil shall by local law reduce the surcharge for the following fiscal
12 year to a level that more adequately reflects the system cost require-
13 ments of its E911 system. The council may also reestablish or increase
14 such surcharge, subject to the provisions of section three hundred three
15 of the county law, if the revenues generated by such surcharge and by
16 any other source are not adequate to pay for system costs.

17 CHAPTER 23-B

18 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

19 § 11-2341 Short title. This chapter shall be known and may be cited as
20 the "wireless communications service surcharge act."

21 § 11-2342 Definitions. (a) "Wireless communications device" means any
22 equipment used to access a wireless communications service.

23 (b) "Wireless communications service" means all commercial mobile
24 services, as that term is defined in subdivision (d) of section three
25 hundred thirty-two of title forty-seven of the United States Code, as
26 amended from time to time, including, but not limited to, all broadband
27 personal communications services, wireless radio telephone services,
28 geographic area specialized and enhanced specialized mobile radio
29 services, and incumbent-wide area specialized mobile radio licensees,
30 which offer real time, two-way voice or data service that is intercon-
31 nected with the public switched telephone network or otherwise provides
32 access to emergency communications services.

33 (c) "Wireless communications service supplier" means any commercial
34 entity that operates a wireless communications service.

35 (d) "Place of primary use" means the street address that is represen-
36 tative of where the customer's use of the wireless communications
37 service primarily occurs, which address must be either the residential
38 street address or the primary business street address of the customer;
39 and within the licensed service area of the wireless communications
40 service provider.

41 § 11-2343 Establishment of surcharge for wireless communications
42 devices. (a) In accordance with the provisions of article six of the
43 county law, as amended, there is hereby established a surcharge of thir-
44 ty cents per month on wireless communications service in the city of New
45 York. The surcharge shall be imposed on each wireless communications
46 device and shall be reflected and made payable on bills rendered for
47 wireless communications service that is provided to a customer whose
48 place of primary use is within the city of New York.

49 (b) The surcharge imposed by subdivision (a) of this section shall be
50 used to pay for the costs associated with the design, construction,
51 operation, maintenance, and administration of public safety communi-
52 cations networks serving the city of New York.

53 (c) All wireless communications service suppliers that provide service
54 to customers whose place of primary use is within the city of New York
55 shall begin to add the monthly surcharge as provided in subdivision (a)

1 of this section to all service bills no later than the forty-fifth day
2 after the effective date of the local law that added this chapter.

3 (d) Notwithstanding any provision of law to the contrary, no surcharge
4 shall be imposed pursuant to this chapter on or after December first,
5 two thousand seventeen.

6 § 11-2344 Collection of surcharge. (a) Each wireless communications
7 service supplier serving the city of New York shall act as collection
8 agent for the city of Staten Island and shall remit the funds collected
9 pursuant to the surcharge imposed under the provisions of this chapter
10 to the commissioner of finance each month. Such funds shall be remitted
11 no later than thirty days after the last business day of the month.

12 (b) Each wireless communications service supplier shall be entitled to
13 retain, as an administrative fee, an amount equal to two per cent of its
14 collections of the surcharge.

15 (c) The surcharge required to be collected by the wireless communi-
16 cations service supplier shall be added to and stated separately in its
17 billings to customers.

18 (d) Each wireless communications service supplier shall annually
19 provide to the city of Staten Island an accounting of the surcharge
20 amounts billed and collected.

21 § 11-2345 Liability for surcharge. (a) Each wireless communications
22 service customer who is subject to the provisions of this chapter shall
23 be liable to the city of Staten Island for the surcharge until it has
24 been paid to the city except that payment to a wireless communications
25 service supplier is sufficient to relieve the customer from further
26 liability for such surcharge.

27 (b) No wireless communications service supplier shall have a legal
28 obligation to enforce the collection of any surcharge imposed under the
29 provisions of this chapter, provided, however, that whenever the wire-
30 less communications service supplier remits the funds collected to the
31 city of Staten Island, it shall also provide the city with the name and
32 address of any customer refusing or failing to pay the surcharge and
33 shall state the amount of such surcharge remaining unpaid.

34 § 11-2346 Systems revenues; adjustment of surcharge. (a) All surcharge
35 monies remitted to the city of Staten Island by a wireless communi-
36 cations service supplier shall be expended only upon authorization of
37 the council and only for payment of system costs or other costs associ-
38 ated with the design, construction, operation, maintenance, and adminis-
39 tration of public safety communications networks serving the city of
40 Staten Island. The finance commissioner and the director of the office
41 of management and budget shall separately account for and keep adequate
42 books and records of the amount and source of all such monies and of the
43 amount and object or purpose of all expenditures thereof.

44 (b) If, at the end of any fiscal year, the total amount of all such
45 monies exceeds the amount necessary for payment of the above mentioned
46 costs in such fiscal year, such excess shall be reserved and carried
47 over for the payment of those costs in the following fiscal year.

48
49

CHAPTER 23-C
WIRELESS COMMUNICATIONS SURCHARGE

50 § 11-2351 Surcharge on wireless communications service. (a) There is
51 hereby imposed within the territorial limits of the city of Staten
52 Island, in accordance with the provisions of section one hundred eight-
53 y-six-g of the tax law, a surcharge on wireless communications service,

1 as such surcharge is described in paragraph (b) of subdivision two of
2 section one hundred eighty-six-g of the tax law.

3 (b) Such surcharge shall be imposed at the rate of thirty cents per
4 month on each wireless communications device in service during any part
5 of the month.

6 (c) A wireless communications service supplier shall begin to add such
7 surcharge to the billings of its customers on December first, two thou-
8 sand seventeen.

9 § 11-2352 Surcharge on the retail sale of each prepaid wireless commu-
10 nications service. (a) There is hereby imposed within the territorial
11 limits of the city of Staten Island, in accordance with the provisions
12 of section one hundred eighty-six-g of the tax law, a surcharge on
13 prepaid wireless communications service, as such surcharge is described
14 in paragraph (c) of subdivision two of section one hundred eighty-six-g
15 of the tax law.

16 (b) Such surcharge shall be imposed at the rate of thirty cents per
17 retail sale.

18 (c) A prepaid wireless communications seller shall begin to collect
19 such surcharge from its customers on December first, two thousand seven-
20 teen.

21

CHAPTER 24

22

TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

23 § 11-2401 Definitions. When used in this chapter the following terms
24 shall mean or include:

25 1. "Person." An individual, partnership, society, association, joint-
26 stock company, corporation, estate, receiver, lessee, trustee, assignee,
27 referee, or any other person acting in a fiduciary or representative
28 capacity, whether appointed by a court or otherwise, and any combination
29 of individuals.

30 2. "Retail licensee." Any person to whom a license has been issued
31 by the state liquor authority under the state alcoholic beverage control
32 law who sells at retail in the city, for on or off premises consumption,
33 any liquor, wine or beer for the sale of which such license is required.

34 3. "Return." Any return required to be filed as provided under this
35 chapter.

36 4. "State." The state of New York.

37 5. "City." The city of Staten Island.

38 6. "Commissioner." The commissioner of finance of the city of Staten
39 Island.

40 7. "Tax year." June first of any calendar year through May thirty-
41 first of the following calendar year.

42 8. "Tax appeals tribunal." The tax appeals tribunal established by
43 section one hundred sixty-eight of the charter of the preceding munici-
44 pality as it existed January first, nineteen hundred ninety-four.

45 § 11-2402 Imposition of tax. For the privilege of selling liquor,
46 wine or beer at retail, for on or off premises consumption, within the
47 city of Staten Island, there is hereby imposed and there shall be paid
48 annually for each tax year, commencing with the tax year beginning June
49 first, nineteen hundred eighty, a tax to be paid by each retail licensee
50 in an amount equal to twenty-five percent of the license fees payable
51 under the state alcoholic beverage control law by such retail licensee
52 for the license year in effect at the commencement of the tax year under
53 this chapter. A retail licensee who obtains a license subsequent to the
54 commencement of a tax year shall pay the tax based upon fees payable

1 under the state alcoholic beverage control law by such licensee for the
2 license year in effect at the time such license is issued. This tax
3 shall be in addition to any and all other taxes paid by such retail
4 licensee.

5 § 11-2403 Exemptions. The tax imposed by this chapter shall not apply
6 to the following:

7 (a) The state of New York, or any of its agencies, instrumentalities,
8 public corporations, including a public corporation created pursuant to
9 agreement or compact with another state or Canada, or political subdivi-
10 sions;

11 (b) The United States of America, and any of its agencies and instru-
12 mentalities insofar as it is immune from taxation;

13 (c) The United Nations or other international organizations of which
14 the United States of America is a member; and

15 (d) Any corporation, or association, or trust, or community chest,
16 fund or foundation, organized and operated exclusively for religious,
17 charitable, or educational purposes, or for the prevention of cruelty to
18 children or animals, and no part of the net earnings of which inures to
19 the benefit of any private shareholder or individual, and no substantial
20 part of the activities of which is carrying on propaganda, or otherwise
21 attempting to influence legislation; provided, however, that nothing in
22 this paragraph shall include an organization operated for the primary
23 purpose of carrying on a trade or business for profit, whether or not
24 all of its profits are payable to one or more organizations described in
25 this subdivision.

26 § 11-2404 Records to be kept. Every retail licensee shall keep such
27 records of its business and in such form as the commissioner may by
28 regulation require. Such records shall be offered for inspection and
29 examination at any time upon demand by the commissioner or his or her
30 duly authorized agent or employee and shall be preserved for a period of
31 three years, except that the commissioner may consent to their
32 destruction within that period or may require that they be kept longer.

33 § 11-2405 Returns. a. On or before the twenty-fifth day of June in
34 each tax year, every person subject to tax under this chapter shall file
35 a return with the commissioner on a form prescribed by the commissioner.
36 A retail licensee who obtains a license subsequent to the commencement
37 of a tax year shall file a return for such tax year on or before the
38 twenty-fifth day of the month following the month in which such license
39 was obtained.

40 b. The return shall state the amount of license fees paid to the
41 state under the alcoholic beverage control law and the date when a
42 license under such law was issued to the retail licensee and shall
43 contain any other information which the commissioner may deem necessary
44 for the proper administration of this chapter. The commissioner may
45 require amended returns to be filed within twenty days after notice and
46 to contain the information specified in the notice.

47 c. If a return required by this chapter is not filed or if a return
48 when filed is incorrect or insufficient on its face, the commissioner
49 shall take the necessary steps to enforce the filing of such a return or
50 of a corrected return.

51 d. The return otherwise required to be filed on or before June twen-
52 ty-fifth, nineteen hundred eighty under the provisions of subdivision a
53 of this section, shall be made and filed on or before August twenty-
54 fifth, nineteen hundred eighty.

55 § 11-2406 Payment of tax. At the time of filing a return each person
56 shall pay to the commissioner the tax imposed under this chapter. Such

1 tax shall be due and payable on the last day on which such return is
2 required to be filed, regardless of whether a return is filed or whether
3 the return which is filed correctly indicates the amount of tax due.

4 § 11-2407 Determination of tax. If a return required by this chapter
5 is not filed, or if a return when filed is incorrect or insufficient,
6 the commissioner shall determine the amount of tax due from such infor-
7 mation as may be obtainable and, if necessary, may estimate the tax on
8 the basis of external indices. Notice of such determination shall be
9 given to the person liable for the payment of the tax. Such determi-
10 nation shall finally and irrevocably fix the tax unless the person
11 against whom it is assessed, within ninety days after the giving of
12 notice of such determination, or, if the commissioner of finance has
13 established a conciliation procedure pursuant to section 11-124 of the
14 code of the preceding municipality and the taxpayer has requested a
15 conciliation conference in accordance therewith, within ninety days from
16 the mailing of a conciliation decision or the date of the commissioner's
17 confirmation of the discontinuance of the conciliation proceeding, both
18 (1) serves a petition upon the commissioner of finance and (2) files a
19 petition with the tax appeals tribunal for a hearing, or unless the
20 commissioner of his or her own motion shall redetermine the same. Such
21 hearing and any appeal to the tax appeals tribunal sitting en banc from
22 the decision rendered in such hearing shall be conducted in the manner
23 and subject to the requirements prescribed by the tax appeals tribunal
24 pursuant to sections one hundred sixty-eight through one hundred seven-
25 ty-two of the charter of the preceding municipality as it existed Janu-
26 ary first, nineteen hundred ninety-four. After such hearing the tax
27 appeals tribunal shall give notice of its decision to the person against
28 whom the tax is assessed and to the commissioner of finance. A decision
29 of the tax appeals tribunal sitting en banc shall be reviewable for
30 error, illegality or unconstitutionality or any other reason whatsoever
31 by a proceeding under article seventy-eight of the civil practice law
32 and rules if application therefor is made to the supreme court by the
33 person against whom the tax was assessed within four months after the
34 giving of the notice of such tax appeals tribunal decision. A proceed-
35 ing under article seventy-eight of the civil practice law and rules
36 shall not be instituted by a taxpayer unless: (a) the amount of any tax
37 sought to be reviewed, with penalties and interest thereon, if any,
38 shall be first deposited with the commissioner and there shall be filed
39 with the commissioner an undertaking issued by a surety company author-
40 ized to transact business in this state and approved by the superinten-
41 dent of insurance of this state as to solvency and responsibility, in
42 such amount as a justice of the supreme court shall approve, to the
43 effect that if such proceeding be dismissed or the tax confirmed, the
44 taxpayer will pay all costs and charges which may accrue in the prose-
45 cution of the proceedings or (b) at the option of the taxpayer, such
46 undertaking may be in a sum sufficient to cover the taxes, interest and
47 penalties stated in such decision, plus the costs and charges which may
48 accrue against it in the prosecution of the proceeding, in which event
49 the taxpayer shall not be required to pay such taxes, interest or penal-
50 ties as a condition precedent to the application.

51 § 11-2408 Refunds. a. In the manner provided in this section, the
52 commissioner shall refund or credit, without interest, any tax, penalty
53 or interest erroneously, illegally or unconstitutionally collected or
54 paid, if written application to the commissioner for such refund shall
55 be made within one year from the payment thereof. Whenever a refund or
56 credit is made or denied, the commissioner shall state his or her reason

1 therefor and give notice thereof to the taxpayer in writing. The commis-
2 sioner may, in lieu of any refund required to be made, allow credit
3 therefor on payments due from the applicant.

4 b. Any determination of the commissioner of finance denying a refund
5 or credit pursuant to subdivision a of this section shall be final and
6 irrevocable unless the applicant for such refund or credit, within nine-
7 ty days from the mailing of notice of such determination, or, if the
8 commissioner of finance has established a conciliation procedure pursu-
9 ant to section 11-124 of the code of the preceding municipality and the
10 applicant has requested a conciliation conference in accordance there-
11 with, within ninety days from the mailing of a conciliation decision or
12 the date of the commissioner's confirmation of the discontinuance of the
13 conciliation proceeding, both (1) serves a petition upon the commis-
14 sioner of finance and (2) files a petition with the tax appeals tribunal for
15 a hearing. Such petition for a refund or credit made as provided in this
16 section shall be deemed an application for a revision of any tax, penal-
17 ty or interest complained of. Such hearing and any appeal to the tribu-
18 nal sitting en banc from the decision rendered in such hearing shall be
19 conducted in the manner and subject to the requirements prescribed by
20 the tax appeals tribunal pursuant to sections one hundred sixty-eight
21 through one hundred seventy-two of the charter of the preceding munici-
22 pality as it existed January first, nineteen hundred ninety-four. After
23 such hearing, the tax appeals tribunal shall give notice of its decision
24 to the applicant and to the commissioner of finance. The applicant shall
25 be entitled to institute a proceeding pursuant to article seventy-eight
26 of the civil practice law and rules to review a decision of the tax
27 appeals tribunal sitting en banc if application to the supreme court be
28 made therefor within four months after the giving of notice of such
29 decision, and provided, in the case of an application by a taxpayer,
30 that a final determination of tax due was not previously made. Such a
31 proceeding shall not be instituted by a taxpayer unless an undertaking
32 shall first be filed with the commissioner, in such amount and with such
33 sureties as a justice of the supreme court shall approve, to the effect
34 that if such proceeding be dismissed or the tax confirmed, the taxpayer
35 will pay all costs and charges which may accrue in the prosecution of
36 the proceeding.

37 c. A person shall not be entitled to a revision, refund or credit
38 under this section, of a tax, interest or penalty which had been deter-
39 mined to be due pursuant to the provisions of section 11-2407 of this
40 chapter where such person has had a hearing or an opportunity for a
41 hearing, as provided in such section or has failed to avail himself or
42 herself of the remedies as provided in such section. No refund or cred-
43 it shall be made of a tax, interest or penalty paid after a determi-
44 nation by the commissioner made pursuant to section 11-2407 of this
45 chapter unless it be found that such determination was erroneous, ille-
46 gal or unconstitutional or otherwise improper, by the tax appeals tribu-
47 nal after a hearing or of the commissioner's own motion, or, if such tax
48 appeals tribunal affirms in whole or in part the determination of the
49 commissioner of finance, in a proceeding under article seventy-eight of
50 the civil practice law and rules, pursuant to the provisions of said
51 section in which event refund or credit without interest shall be made
52 of the tax, interest or penalty found to have been overpaid.

53 § 11-2409 Remedies exclusive. The remedies provided by this chapter
54 shall be the exclusive remedies available to any person for the review
55 of tax liability imposed by this chapter; and no determination or
56 proposed determination of tax or determination on any application for

1 refund by the commissioner of finance, nor any decision by the tax
2 appeals tribunal or any of its administrative law judges, shall be
3 enjoined or reviewed by an action for declaratory judgment, an action
4 for money had and received or by any action or proceeding other than, in
5 the case of a decision by the tax appeals tribunal sitting en banc, a
6 proceeding under article seventy-eight of the civil practice law and
7 rules; provided, however, that a taxpayer may proceed by declaratory
8 judgment if such taxpayer institutes suit within thirty days after a
9 deficiency assessment is made and pays the amount of the deficiency
10 assessment to the commissioner prior to the institution of such suit and
11 posts a bond for costs as provided in section 11-2407 of this chapter.

12 § 11-2410 Reserves. In cases where the taxpayer has applied for a
13 refund and has instituted a proceeding under article seventy-eight of
14 the civil practice law and rules to review a determination adverse to
15 such taxpayer on his or her application for refund, the city comptroller
16 shall set up appropriate reserves to meet any decision adverse to the
17 city.

18 § 11-2411 Proceedings to recover tax. a. Whenever any person shall
19 fail to pay any tax or penalty or interest imposed by this chapter, the
20 corporation counsel shall, upon the request of the commissioner, bring
21 or cause to be brought an action to enforce payment of the same against
22 the person liable for the same on behalf of the city of Staten Island in
23 any court of the state of New York or of any other state or of the
24 United States. If, however, the commissioner in his or her discretion
25 believes that a taxpayer subject to the provisions of this chapter is
26 about to cease business, leave the state or remove or dissipate the
27 assets out of which tax or penalties or interest might be satisfied and
28 that any such tax or penalty or interest will not be paid when due, he
29 or she may declare such tax or penalty or interest to be immediately due
30 and payable and may issue a warrant immediately.

31 b. As an additional or alternate remedy, the commission may issue a
32 warrant, directed to the city sheriff, commanding such sheriff to levy
33 upon and sell the real and personal property of such person which may be
34 found within the city, for the payment of the amount thereof, with any
35 penalties and interest, and the cost of executing the warrant, and to
36 return such warrant to the commissioner and to pay to him or her the
37 money collected by virtue thereof within sixty days after receipt of
38 such warrant. The city sheriff shall, within five days after the
39 receipt of the warrant, file with the county clerk a copy thereof, and
40 thereupon such clerk shall enter in the judgment docket the name of the
41 person mentioned in the warrant and the amount of the tax, penalties and
42 interest for which the warrant is issued and the date when such copy is
43 filed. Thereupon the amount of such warrant so docketed shall become a
44 lien upon the title to and interest in real and personal property of the
45 person against whom the warrant is issued. The city sheriff shall then
46 proceed upon the warrant in the same manner and with like effect as that
47 provided by law in respect to executions issued against property upon
48 judgments of a court of record, and for services in executing the
49 warrant such sheriff shall be entitled to the same fees which he or she
50 may collect in the same manner. In the discretion of the commissioner a
51 warrant of like terms, force and effect may be issued and directed to
52 any officer or employee of the department of finance, and in the
53 execution thereof such officer or employee shall have all the powers
54 conferred by law upon sheriffs, but he or she shall be entitled to no
55 fee for compensation in excess of the actual expenses paid in the
56 performance of such duty. If a warrant is returned not satisfied in

1 full, the commissioner may from time to time issue new warrants and
2 shall also have the same remedies to enforce the amount due thereunder
3 as if the city had recovered judgment therefor and execution thereon had
4 been returned unsatisfied.

5 c. Whenever there is made a sale, transfer or assignment in bulk of
6 any part or the whole of a stock of merchandise or of fixtures, or
7 merchandise and of fixtures pertaining to the conducting of the business
8 of the seller, transferor or assignor, otherwise than in the ordinary
9 course of trade and in the regular prosecution of said business, the
10 purchaser, transferee or assignee shall at least ten days before taking
11 possession of such merchandise, fixtures, or merchandise and fixtures,
12 or paying therefor, notify the commissioner by registered mail of the
13 proposed sale and of the price, terms and conditions thereof whether or
14 not the seller, transferor or assignor, has represented to, or informed
15 the purchaser, transferee or assignee that it owes any tax pursuant to
16 this chapter and whether or not the purchaser, transferee or assignee
17 has knowledge that such taxes are owing, and whether any such taxes are
18 in fact owing.

19 Whenever the purchaser, transferee or assignee shall fail to give
20 notice to the commissioner as required by the opening paragraph of this
21 subdivision, or whenever the commissioner shall inform the purchaser,
22 transferee or assignee that a possible claim for such tax or taxes
23 exists, any sums of money, property or choses in action, or other
24 consideration, which the purchaser, transferee or assignee is required
25 to transfer over to the seller, transferor or assignor shall be subject
26 to a first priority right and lien for any such taxes theretofore or
27 thereafter determined to be due from the seller, transferor or assignor
28 to the city, and the purchaser, transferee or assignee is forbidden to
29 transfer to the seller, transferor or assignor any such sums of money,
30 property or choses in action to the extent of the amount of the city's
31 claim. For failure to comply with the provisions of this subdivision,
32 the purchaser, transferee or assignee, in addition to being subject to
33 the liabilities and remedies imposed under the provisions of article six
34 of the uniform commercial code, shall be personally liable for the
35 payment to the city of any such taxes theretofore or thereafter deter-
36 mined to be due to the city from the seller, transferor or assignor, and
37 such liability may be assessed and enforced in the same manner as the
38 liability for tax under this chapter.

39 d. The commissioner of finance, if he or she finds that the interests
40 of the city will not thereby be jeopardized, and upon such conditions as
41 the commissioner of finance may require, may release any property from
42 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
43 tions to tax, penalties and interest filed pursuant to subdivision b of
44 this section, and such release or vacating of the warrant may be
45 recorded in the office of any recording officer in which such warrant
46 has been filed. The clerk shall thereupon cancel and discharge as of the
47 original date of docketing the vacated warrant.

48 § 11-2412 General powers of the commissioner. In addition to all
49 other powers granted to the commissioner in this chapter, he or she is
50 hereby authorized and empowered:

51 1. To make, adopt and amend rules and regulations appropriate to the
52 carrying out of this chapter and the purposes thereof; and to prescribe
53 the form of blanks, reports and other records relating to the enforce-
54 ment and administration of this chapter;

1 2. To extend, for cause shown, the time for filing any return for a
2 period not exceeding thirty days; and to compromise disputed claims in
3 connection with the taxes hereby imposed;

4 3. To request information from the department of taxation and finance
5 of the state of New York or the state liquor authority or the officials
6 of any political subdivision of this state or the treasury department of
7 the United States relative to any person; and to afford information to
8 such department of taxation and finance, liquor authority, officials or
9 treasury department relative to any person, any other provision of this
10 chapter to the contrary notwithstanding;

11 4. To delegate his or her functions under this section to a deputy or
12 assistant or other employee or employees of his or her department;

13 5. To assess, reassess, determine, revise and readjust the taxes
14 imposed under this chapter;

15 6. To provide by regulation for granting a refund of an appropriate
16 portion of the tax where the retail licensee ceases to do business
17 during the course of the tax year under circumstances which result in,
18 or would entitle such licensee to, a refund of license fee by the state
19 liquor authority. The provisions of section 11-2408 of this chapter
20 shall be applicable to such refunds.

21 § 11-2413 Administration of oaths and compelling testimony. a. The
22 commissioner, his or her employees duly designated and authorized by the
23 commissioner, the tax appeals tribunal and any of its duly designated
24 and authorized employees shall have power to administer oaths and take
25 affidavits in relation to any matter or proceeding in the exercise of
26 their powers and duties under this chapter. The commissioner and the tax
27 appeals tribunal shall have power to subpoena and require the attendance
28 of witnesses and the production of books, papers and documents to secure
29 information pertinent to the performance of the duties of the commis-
30 sioner or the tax appeals tribunal under this chapter and of the
31 enforcement of this chapter and to examine them in relation thereto, and
32 to issue commissions for the examination of witnesses who are out of the
33 state or unable to attend before the commissioner or the tax appeals
34 tribunal or excused from attendance.

35 b. A justice of the supreme court either in court or at chambers shall
36 have power summarily to enforce by proper proceedings the attendance and
37 testimony of witnesses and the production and examination of books,
38 papers and documents called for by the subpoena of the commissioner or
39 the tax appeals tribunal under this chapter.

40 c. Cross-reference; criminal penalties. For failure to obey subpoenas
41 or for testifying falsely, see section 11-4007 of this title; for
42 supplying false or fraudulent information, see section 11-4009 of this
43 title.

44 d. The officers who serve the summons or subpoena of the commissioner
45 of finance or the tax appeals tribunal under this chapter and witnesses
46 attending in response thereto shall be entitled to the same fees as are
47 allowed to officers and witnesses in civil cases in courts of record,
48 except as otherwise provided in this chapter. Such officers shall be
49 the city sheriff, and his or her duly appointed deputies or any officers
50 or employees of the department of finance or the tax appeals tribunal,
51 designated to serve such process.

52 § 11-2414 Interest and penalties. (a) Interest on underpayments. If
53 any amount of tax is not paid on or before the last date prescribed for
54 payment, without regard to any extension of time granted for payment,
55 interest on such amount at the rate set by the commissioner of finance
56 pursuant to subdivision (g) of this section, or, if no rate is set, at

1 the rate of seven and one-half percent per annum, shall be paid for the
2 period from such last date to the date of payment. In computing the
3 amount of interest to be paid, such interest shall be compounded daily.
4 Interest under this subdivision shall not be paid if the amount thereof
5 is less than one dollar.

6 (b) (1) Failure to file return. (A) In case of failure to file a
7 return under this chapter on or before the prescribed date, determined
8 with regard to any extension of time for filing, unless it is shown that
9 such failure is due to reasonable cause and not due to willful neglect,
10 there shall be added to the amount required to be shown as tax on such
11 return five percent of the amount of such tax if the failure is for not
12 more than one month, with an additional five percent for each additional
13 month or fraction thereof during which such failure continues, not
14 exceeding twenty-five percent in the aggregate.

15 (B) In the case of a failure to file a return of tax within sixty days
16 of the date prescribed for filing of such return, determined with regard
17 to any extension of time for filing, unless it is shown that such fail-
18 ure is due to reasonable cause and not due to willful neglect, the addi-
19 tion to tax under subparagraph (A) of this paragraph shall not be less
20 than the lesser of one hundred dollars or one hundred percent of the
21 amount required to be shown as tax on such return.

22 (C) For purposes of this paragraph, the amount of tax required to be
23 shown on the return shall be reduced by the amount of any part of the
24 tax which is paid on or before the date prescribed for payment of the
25 tax and by the amount of any credit against the tax which may be claimed
26 upon the return.

27 (2) Failure to pay tax shown on return. In case of failure to pay the
28 amount shown as tax on a return required to be filed under this chapter
29 on or before the prescribed date, determined with regard to any exten-
30 sion of time for payment, unless it is shown that such failure is due to
31 reasonable cause and not due to willful neglect, there shall be added to
32 the amount shown as tax on such return one-half of one percent of the
33 amount of such tax if the failure is not for more than one month, with
34 an additional one-half of one percent for each additional month or frac-
35 tion thereof during which such failure continues, not exceeding twenty-
36 five percent in the aggregate. For the purpose of computing the addition
37 for any month the amount of tax shown on the return shall be reduced by
38 the amount of any part of the tax which is paid on or before the begin-
39 ning of such month and by the amount of any credit against the tax which
40 may be claimed upon the return. If the amount of tax required to be
41 shown on a return is less than the amount shown as tax on such return,
42 this paragraph shall be applied by substituting such lower amount.

43 (3) Failure to pay tax required to be shown on return. In case of
44 failure to pay any amount in respect of any tax required to be shown on
45 a return required to be filed under this chapter which is not so shown,
46 including a determination made pursuant to section 11-2407 of this chap-
47 ter, within ten days of the date of a notice and demand therefor, unless
48 it is shown that such failure is due to reasonable cause and not due to
49 willful neglect, there shall be added to the amount of tax stated in
50 such notice and demand one-half of one percent of such tax if the fail-
51 ure is not for more than one month, with an additional one-half of one
52 percent for each additional month or fraction thereof during which such
53 failure continues, not exceeding twenty-five percent in the aggregate.
54 For the purpose of computing the addition for any month, the amount of
55 tax stated in the notice and demand shall be reduced by the amount of
56 any part of the tax which is paid before the beginning of such month.

1 (4) Limitations on additions.

2 (A) With respect to any return the amount of the addition under para-
3 graph one of this subdivision shall be reduced by the amount of the
4 addition under paragraph two of this subdivision for any month to which
5 an addition applies under both paragraphs one and two. In any case
6 described in subparagraph (B) of paragraph one of this subdivision, the
7 amount of the addition under such paragraph one shall not be reduced
8 below the amount provided in such subparagraph.

9 (B) With respect to any return, the maximum amount of the addition
10 permitted under paragraph three of this subdivision shall be reduced by
11 the amount of the addition under paragraph one of this subdivision,
12 determined without regard to subparagraph (B) of such paragraph one,
13 which is attributable to the tax for which the notice and demand is made
14 and which is not paid within ten days of such notice and demand.

15 (c) Underpayment due to negligence. (1) If any part of an underpay-
16 ment of tax is due to negligence or intentional disregard of this chap-
17 ter or any rules or regulations relating thereto, but without intent to
18 defraud, there shall be added to the tax a penalty equal to five percent
19 of the underpayment.

20 (2) There shall be added to the tax, in addition to the amount deter-
21 mined under paragraph one of this subdivision, an amount equal to fifty
22 percent of the interest payable under subdivision (a) of this section
23 with respect to the portion of the underpayment described in such para-
24 graph one which is attributable to the negligence or intentional disre-
25 gard referred to in such paragraph one, for the period beginning on the
26 last date prescribed by law for payment of such underpayment, determined
27 without regard to any extension, and ending on the date of the assess-
28 ment of the tax, or, if earlier, the date of the payment of the tax.

29 (d) Underpayment due to fraud. (1) If any part of an underpayment of
30 tax is due to fraud, there shall be added to the tax a penalty equal to
31 fifty percent of the underpayment.

32 (2) There shall be added to the tax, in addition to the penalty deter-
33 mined under paragraph one of this subdivision, an amount equal to fifty
34 percent of the interest payable under subdivision (a) of this section
35 with respect to the portion of the underpayment described in such para-
36 graph one which is attributable to fraud, for the period beginning on
37 the last day prescribed by law for payment of such underpayment, deter-
38 mined without regard to any extension, and ending on the date of the
39 assessment of the tax, or, if earlier, the date of the payment of the
40 tax.

41 (3) The penalty under this subdivision shall be in lieu of any other
42 addition to tax imposed by subdivision (b) or (c) of this section.

43 (e) Additional penalty. Any person who, with fraudulent intent, shall
44 fail to pay any tax imposed by this chapter, or to make, render, sign or
45 certify any return, or to supply any information within the time
46 required by or under this chapter, shall be liable for a penalty of not
47 more than one thousand dollars, in addition to any other amounts
48 required under this chapter to be imposed, assessed and collected by the
49 commissioner of finance. The commissioner of finance shall have the
50 power, in his or her discretion, to waive, reduce or compromise any
51 penalty under this subdivision.

52 (f) The interest and penalties imposed by this section shall be paid
53 and disposed of in the same manner as other revenues from this chapter.
54 Unpaid interest and penalties may be enforced in the same manner as the
55 tax imposed by this chapter.

1 (g)(1) Authority to set interest rates. The commissioner of finance
2 shall set the rate of interest to be paid pursuant to subdivision (a) of
3 this section, but if no such rate of interest is set, such rate shall be
4 deemed to be set at seven and one-half percent per annum. Such rate
5 shall be the rate prescribed in paragraph two of this subdivision but
6 shall not be less than seven and one-half percent per annum. Any such
7 rate set by the commissioner of finance shall apply to taxes, or any
8 portion thereof, which remain or become due on or after the date on
9 which such rate becomes effective and shall apply only with respect to
10 interest computed or computable for periods or portions of periods
11 occurring in the period in which such rate is in effect.

12 (2) General rule. The rate of interest set under this subdivision
13 shall be the sum of (i) the federal short-term rate as provided under
14 paragraph three of this subdivision, plus (ii) seven percentage points.

15 (3) Federal short-term rate. For purposes of this subdivision:

16 (A) The federal short-term rate for any month shall be the federal
17 short-term rate determined by the United States secretary of the treas-
18 ury during such month in accordance with subsection (d) of section
19 twelve hundred seventy-four of the internal revenue code for use in
20 connection with section six thousand six hundred twenty-one of the
21 internal revenue code. Any such rate shall be rounded to the nearest
22 full percent, or, if a multiple of one-half of one percent, such rate
23 shall be increased to the next highest full percent.

24 (B) Period during which rate applies.

25 (i) In general. Except as provided in clause (ii) of this subpara-
26 graph, the federal short-term rate for the first month in each calendar
27 quarter shall apply during the first calendar quarter beginning after
28 such month.

29 (ii) Special rule for the month of September, nineteen hundred eight-
30 y-nine. The federal short-term rate for the month of April, nineteen
31 hundred eighty-nine shall apply with respect to setting the rate of
32 interest for the month of September, nineteen hundred eighty-nine.

33 (4) Publication of interest rate. The commissioner of finance shall
34 cause to be published in the City Record, and give other appropriate
35 general notice of, the interest rate to be set under this subdivision no
36 later than twenty days preceding the first day of the calendar quarter
37 during which such interest rate applies. The setting and publication of
38 such interest rate shall not be included within paragraph (a) of subdi-
39 vision five of section one thousand forty-one of the city charter of the
40 preceding municipality as it existed January first, nineteen hundred
41 ninety-four relating to the definition of a rule.

42 (h) Miscellaneous. (1) The certificate of the commissioner of finance
43 to the effect that a tax has not been paid, that a return has not been
44 filed, that information has not been supplied pursuant to the provisions
45 of this chapter or that records have not been retained pursuant to the
46 provisions of this chapter shall be prima facie evidence thereof.

47 (2) Cross-reference: For criminal penalties, see chapter forty of this
48 title.

49 § 11-2415 Returns to be secret. (a) Except in accordance with proper
50 judicial order, or as otherwise provided by law, it shall be unlawful
51 for the commissioner, the tax appeals tribunal or any officer or employ-
52 ee of the city to divulge or make known in any manner any information
53 relating to the business of a taxpayer contained in any return required
54 under this chapter. The officers charged with the custody of such
55 returns shall not be required to produce any of them or evidence of
56 anything contained in them in any action or proceeding in any court,

1 except on behalf of the commissioner in an action or proceeding under
2 the provisions of this chapter, or on behalf of any party to any action
3 or proceeding under the provisions of this chapter when the returns or
4 facts shown thereby are directly involved in such action or proceeding,
5 in either of which events the court may require the production of, and
6 may admit in evidence, so much of said returns or of the facts shown
7 thereby, as are pertinent to the action or proceeding and no more.
8 Nothing under this section shall be construed to prohibit the delivery
9 to a taxpayer or the taxpayer's duly authorized representative of a
10 certified copy of any return filed in connection with his or her tax nor
11 to prohibit the publication of statistics so classified as to prevent
12 the identification of particular returns and the items thereof, or the
13 inspection by the corporation counsel or other legal representatives of
14 the city, or by the district attorney of Richmond county, of the return
15 of any taxpayer who shall bring action to set aside or review the tax
16 based thereon, or against whom an action or proceeding under this chap-
17 ter may be instituted. Returns shall be preserved for three years and
18 thereafter until the commissioner permits them to be destroyed.

19 (b) (1) Any officer or employee of the city who willfully violates the
20 provisions of subdivision (a) of this section shall be dismissed from
21 office and be incapable of holding any public office in this city for a
22 period of five years thereafter.

23 (2) Cross-reference: For criminal penalties, see chapter forty of this
24 title.

25 (c) This section shall be deemed a state statute for purposes of
26 paragraph (a) of subdivision two of section eighty-seven of the public
27 officers law.

28 (d) Notwithstanding anything in subdivision (a) of this section to the
29 contrary, if a taxpayer has petitioned the tax appeals tribunal for
30 administrative review as provided in section one hundred seventy of the
31 charter of the preceding municipality as it existed January first, nine-
32 teen hundred ninety-four, the commissioner of finance shall be author-
33 ized to present to the tribunal any report or return of such taxpayer,
34 or any information contained therein or relating thereto, which may be
35 material or relevant to the proceeding before the tribunal. The tax
36 appeals tribunal shall be authorized to publish a copy or a summary of
37 any decision rendered pursuant to section one hundred seventy-one of the
38 charter of the preceding municipality as it existed January first, nine-
39 teen hundred ninety-four.

40 § 11-2416 Notices and limitations of time. a. Any notice authorized
41 or required under the provisions of this chapter may be given by mailing
42 the same to the person for whom it is intended in a postpaid envelope
43 addressed to such person at the address given in the last return filed
44 by him or her pursuant to the provisions of this chapter or in any
45 application made by him or her, or, if no return has been filed or
46 application made, then to such address as may be obtainable. The mailing
47 of such notice shall be presumptive evidence of the receipt of the same
48 by the person to whom addressed. Any period of time which is determined
49 according to the provisions of this chapter by the giving of notice
50 shall commence to run from the date of mailing of such notice.

51 b. The provisions of the civil practice law and rules or any other law
52 relative to limitations of time for the enforcement of a civil remedy
53 shall not apply to any proceeding or action taken by the city to levy,
54 appraise, assess, determine or enforce the collection of any tax or
55 penalty or interest provided by this chapter. However, except in the
56 case of a wilfully false or fraudulent return with intent to evade the

1 tax, no assessment of additional tax shall be made after the expiration
2 of more than three years from the date of the filing of a return,
3 provided, however, that where no return has been filed as provided by
4 law the tax may be assessed at any time.

5 c. Where, before the expiration of the period prescribed in this
6 section for the assessment of an additional tax, a taxpayer has
7 consented in writing that such period be extended, the amount of such
8 additional tax due may be determined at any time within such extended
9 period. The period so extended may be further extended by subsequent
10 consents in writing made before the expiration of the extended period.

11 d. If any return, claim, statement, notice, application, or other
12 document required to be filed, or any payment required to be made, with-
13 in a prescribed period or on or before a prescribed date under authority
14 of any provision of this chapter is, after such period or such date,
15 delivered by United States mail to the commissioner of finance, the tax
16 appeals tribunal, bureau, office, officer or person with which or with
17 whom such document is required to be filed, or to which or to whom such
18 payment is required to be made, the date of the United States postmark
19 stamped on the envelope shall be deemed to be the date of delivery. This
20 subdivision shall apply only if the postmark date falls within the
21 prescribed period or on or before the prescribed date for the filing of
22 such document, or for making the payment, including any extension grant-
23 ed for such filing or payment, and only if such document or payment was
24 deposited in the mail, postage prepaid, properly addressed to the
25 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
26 cer or person with which or with whom the document is required to be
27 filed or to which or to whom such payment is required to be made. If any
28 document is sent by United States registered mail, such registration
29 shall be prima facie evidence that such document was delivered to the
30 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
31 cer or person to which or to whom addressed, and the date of registra-
32 tion shall be deemed the postmark date. The commissioner of finance and,
33 where relevant, the tax appeals tribunal are authorized to provide by
34 regulation the extent to which, such provisions with respect to prima
35 facie evidence of delivery and the postmark date, shall apply to certi-
36 fied mail. Except as provided in subdivision f of this section, this
37 subdivision shall apply in the case of postmarks not made by the United
38 States postal service only if and to the extent provided by regulation
39 of the commissioner of finance or, where relevant, the tax appeals
40 tribunal.

41 e. When the last day prescribed under authority of this chapter,
42 including any extension of time, for performing any act falls on a
43 Saturday, Sunday or legal holiday in the state, the performance of such
44 act shall be considered timely if it is performed on the next succeeding
45 day which is not a Saturday, Sunday or legal holiday.

46 f. (1) Any reference in subdivision d of this section to the United
47 States mail shall be treated as including a reference to any delivery
48 service designated by the secretary of the treasury of the United States
49 pursuant to section seventy-five hundred two of the internal revenue
50 code and any reference in subdivision d of this section to a United
51 States postmark shall be treated as including a reference to any date
52 recorded or marked in the manner described in section seventy-five
53 hundred two of the internal revenue code by a designated delivery
54 service. If the commissioner of finance finds that any delivery service
55 designated by such secretary is inadequate for the needs of the city,
56 the commissioner of finance may withdraw such designation for purposes

1 of this title. The commissioner of finance may also designate additional
2 delivery services meeting the criteria of section seventy-five hundred
3 two of the internal revenue code for purposes of this title, or may
4 withdraw any such designation if the commissioner of finance finds that
5 a delivery service so designated is inadequate for the needs of the
6 city. Any reference in subdivision d of this section to the United
7 States mail shall be treated as including a reference to any delivery
8 service designated by the commissioner of finance and any reference in
9 subdivision d of this section to a United States postmark shall be
10 treated as including a reference to any date recorded or marked in the
11 manner described in section seventy-five hundred two of the internal
12 revenue code by a delivery service designated by the commissioner of
13 finance, provided, however, any withdrawal of designation or additional
14 designation by the commissioner of finance shall not be effective for
15 purposes of service upon the tax appeals tribunal, unless and until such
16 withdrawal of designation or additional designation is ratified by the
17 president of the tax appeals tribunal.

18 (2) Any equivalent of registered or certified mail designated by the
19 United States secretary of the treasury, or as may be designated by the
20 commissioner of finance pursuant to the same criteria used by such
21 secretary for such designations pursuant to section seventy-five hundred
22 two of the internal revenue code, shall be included within the meaning
23 of registered or certified mail as used in subdivision d of this
24 section. If the commissioner of finance finds that any equivalent of
25 registered or certified mail designated by such secretary or the commis-
26 sioner of finance is inadequate for the needs of the city, the commis-
27 sioner of finance may withdraw such designation for purposes of this
28 title, provided, however, any withdrawal of designation or additional
29 designation by the commissioner of finance shall not be effective for
30 purposes of service upon the tax appeals tribunal, unless and until such
31 withdrawal of designation or additional designation is ratified by the
32 president of the tax appeals tribunal.

33 § 11-2417 Construction and enforcement. This chapter shall be
34 construed and enforced in conformity with article twenty-nine of the tax
35 law, pursuant to which it is enacted.

36 CHAPTER 25
37 TAX ON OCCUPANCY OF HOTEL ROOMS

38 § 11-2501 Definitions. When used in this chapter the following terms
39 shall mean or include:

40 1. "Person." An individual, partnership, society, association, joint-
41 stock company, corporation, estate, receiver, trustee, assignee, refer-
42 ee, or any other person acting in a fiduciary or representative capaci-
43 ty, whether appointed by a court or otherwise and any combination
44 thereof.

45 2. "Operator." Any person operating a hotel in the city of Staten
46 Island, including, but not limited to, the owner or proprietor of such
47 premises, lessee, sublessee, mortgagee in possession, licensee or any
48 other person otherwise operating such hotel.

49 3. "Occupant." A person who, for a consideration, uses, possesses, or
50 has the right to use or possess, any room or rooms in a hotel under any
51 lease, concession, permit, right of access, license to use or other
52 agreement, or otherwise. "Right to use or possess" includes the rights
53 of a room remarketer as described in subdivision twelve of this section.

1 4. "Occupancy." The use or possession, or the right to the use or
2 possession of any room or rooms in a hotel, or the right to the use or
3 possession of the furnishings or to the services and accommodations
4 accompanying the use and possession of the room or rooms. "Right to use
5 or possess" includes the rights of a room remarketer as described in
6 subdivision twelve of this section.

7 5. "Hotel." A building or portion of it which is regularly used and
8 kept open as such for the lodging of guests. The term "hotel" includes
9 an apartment hotel, a motel, boarding house or club, whether or not
10 meals are served.

11 6. "Room." Any room of any kind, other than a bathroom or lavatory, in
12 any part or portion of a hotel which is available for, or let out for,
13 use or possession for any purpose other than a place of assembly as
14 defined in section 27-232 of the code of the preceding municipality.

15 7. "Rent." The consideration received for occupancy valued in money,
16 whether received in money or otherwise, including all receipts, cash,
17 credits, and property or services of any kind or nature, including any
18 service or other charge or amount required to be paid as a condition for
19 occupancy, and also any amount for which credit is allowed by the opera-
20 tor or room remarketer to the occupant, without any deduction therefrom
21 whatsoever, whether received by the operator or a room remarketer or
22 another person on behalf of either of them.

23 8. "Permanent resident." Any occupant of any room or rooms in a hotel
24 for at least one hundred eighty consecutive days shall be considered a
25 permanent resident with regard to the period of such occupancy.

26 9. "Commissioner of finance." The commissioner of finance of the city.

27 10. "Comptroller." The comptroller of the city.

28 11. "Tax appeals tribunal." The tax appeals tribunal established by
29 section one hundred sixty-eight of the charter of the preceding munici-
30 pality as it existed January first, nineteen hundred ninety-four.

31 12. "Room remarketer." A person who reserves, arranges for, conveys,
32 or furnishes occupancy, whether directly or indirectly, to an occupant
33 for rent in an amount determined by such room remarketer, directly or
34 indirectly, whether pursuant to a written or other agreement. Such
35 person's ability or authority to reserve, arrange for, convey, or
36 furnish occupancy, directly or indirectly, and to determine rent there-
37 for, shall be the "rights of a room remarketer". A room remarketer is
38 not a permanent resident with respect to a room for which such person
39 has the rights of a room remarketer.

40 § 11-2502 Imposition of tax. a. (1) On and after July first, nineteen
41 hundred seventy until and including August thirty-first, nineteen
42 hundred eighty, there is hereby imposed and there shall be paid a tax
43 for every occupancy of each room in a hotel in the city of Staten Island
44 at the rates set forth in, and determined in accordance with the follow-
45 ing table:

46 If the rent per day for the room is:	The tax is:
47 Less than \$10	\$.25 per day
48 \$10 or more, but less than \$15	\$.50 per day
49 \$15 or more, but less than \$20	\$.75 per day
50 \$20 or more	\$1.00 per day

51 (2) On and after September first, nineteen hundred eighty, there is
52 hereby imposed and there shall be paid a tax for every occupancy of each
53 room in a hotel in the city of Staten Island at the rates set forth in,
54 and determined in accordance with, the following table:

55 If the rent per day for the room is:	The tax is:
56 \$10 or more, but less than \$20	\$.50 per day

1 \$20 or more, but less than \$30 \$1.00 per day
 2 \$30 or more, but less than \$40 \$1.50 per day
 3 \$40 or more \$2.00 per day
 4 Where a person occupies a room for less than a full day and pays less
 5 than the rent for a full day, the tax shall nevertheless be the same
 6 amount as would be due had such person occupied the room for a full day
 7 at the rent for a full day.

8 (3) In addition to the tax imposed by paragraph two of this subdivi-
 9 sion, there is hereby imposed and there shall be paid a tax for every
 10 occupancy of each room in a hotel in the city (A) at the rate of five
 11 percent of the rent or charge per day for each such room up to and
 12 including August thirty-first, nineteen hundred ninety, (B) at the rate
 13 of six percent of the rent or charge per day for each such room on and
 14 after September first, nineteen hundred ninety and before December
 15 first, nineteen hundred ninety-four, (C) at the rate of five percent of
 16 the rent or charge per day for each such room on and after December
 17 first, nineteen hundred ninety-four and before March first, two thousand
 18 nine, (D) at the rate of five and seven-eighths percent of the rent or
 19 charge per day for each such room on and after March first, two thousand
 20 nine and before December first, two thousand thirteen, (E) at the rate
 21 of five percent of the rent or charge per day for each such room on and
 22 after December first, two thousand thirteen and before December twenti-
 23 eth, two thousand thirteen, (F) at the rate of five and seven-eighths
 24 percent of the rent or charge per day for each such room on and after
 25 December twentieth, two thousand thirteen and before December first, two
 26 thousand twenty-three, and (G) at the rate of five percent of the rent
 27 or charge per day for each such room on and after December first, two
 28 thousand twenty-three.

29 (4) (A) When occupancy is provided, for a single consideration, with
 30 property, services, amusement charges, or any other items, the separate
 31 sale of which is not subject to tax under this chapter, and the rent
 32 paid for such occupancy does not qualify for the exemption in this
 33 subdivision, the entire consideration shall be treated as rent subject
 34 to tax under paragraph one of this subdivision; provided, however, that
 35 where the amount of the rent for occupancy is stated separately from the
 36 price of such property, services, amusement charges or other items on
 37 any sales slip, invoice, receipt, or other statement given the occupant
 38 and such rent is reasonable in relation to the value of such property,
 39 services, amusement charges, or other items, only such separately stated
 40 rent will be subject to tax under this subdivision. (B) In regard to
 41 the collection of tax on occupancies by remarketers, when occupancy is
 42 provided, for a single consideration, with property, services, amusement
 43 charges, or any other items, whether or not such other items are taxa-
 44 ble, the rent portion of the consideration for such sale shall be
 45 computed as follows: the total consideration for the sale multiplied by
 46 a fraction, the numerator of which shall be the consideration paid to
 47 the hotel for the occupancy and the denominator of which shall be the
 48 consideration paid to the hotel for the occupancy plus the consideration
 49 paid to the providers of the other items being sold, or by any other
 50 reasonable method pursuant to which the rent portion of consideration
 51 would be no less than the computation of rent portion of consideration
 52 under subparagraph (A) of this paragraph. Nothing in this subdivision
 53 shall be construed to subject to tax or exempt from tax any service or
 54 property or amusement charge or other items otherwise subject to tax or
 55 exempt from tax under this chapter.

1 (5) A room remarketer shall be allowed a refund or credit against the
2 taxes collected and required to be remitted pursuant to section 11-2505
3 of this chapter in the amount of the tax it paid to the operator of the
4 hotel or another room remarketer under this subdivision. Provided,
5 however, that in order to qualify for a refund or credit under this
6 paragraph with respect to any quarterly period, as described in subdivi-
7 sion a of section 11-2504 of this chapter, the room remarketer must,
8 with respect to such quarter, (A) be registered for hotel room occupancy
9 tax purposes under section 11-2514 of this chapter, and (B) collect the
10 taxes imposed by paragraphs two and three of this subdivision. Subject
11 to the conditions and limitations of this paragraph, the provisions of
12 section 11-2507 of this chapter shall apply to refunds or credits under
13 this paragraph.

14 (6) Where the rent is paid or charged or billed, or falls due on
15 either a weekly, monthly or other term basis, the daily rent upon which
16 the tax is determined shall be the result obtained by dividing the rent
17 for such term by the number of days in such term. Where the rent is for
18 more than one room, including but not limited to a suite of rooms, the
19 daily rent per room upon which tax is determined shall be calculated by
20 multiplying the daily rent for the group of rooms by a fraction, the
21 numerator of which shall be the daily rent for the particular room, or a
22 similar room, when such room is rented alone with similar bath facili-
23 ties, and the denominator of which shall be the total of the daily rent
24 for the individual rooms in the group of rooms, or similar rooms, when
25 such rooms are rented alone with similar bath facilities. In any case in
26 which it is not possible to determine the daily rent per room in the
27 manner described under this paragraph, the commissioner of finance shall
28 prescribe methods for making such determination.

29 b. (1) No tax shall be imposed under this chapter upon a permanent
30 resident.

31 (2) For purposes of this subdivision, an occupant who is eligible to
32 request and has requested a lease pursuant to the provisions of para-
33 graph two of subdivision (a) of section 2522.5 of the rent stabilization
34 regulations promulgated by the division of housing and community renewal
35 of the state of New York, shall tentatively be accorded the status of
36 permanent resident as of the date of such request, notwithstanding that
37 such occupant has not met the one hundred eighty-consecutive-day
38 requirement contained in subdivision eight of section 11-2501 of this
39 chapter as of such date. In the case of such an occupant, the operator
40 or room remarketer shall not collect the taxes imposed by this chapter
41 for any day, commencing with the date such lease is requested, which
42 falls within a period of continuous occupancy by such occupant of a room
43 or rooms in the hotel. Provided, however, if such occupant ceases to
44 occupy a room or rooms in the hotel prior to the completion of one
45 hundred eighty consecutive days of occupancy, any taxes not collected
46 theretofore by reason of the provisions of this paragraph shall become
47 immediately due and payable on the date of cessation of occupancy and
48 shall be collected by the operator or room remarketer from such occu-
49 pant. In the event, however, that the operator or room remarketer is
50 unable to collect such taxes from the occupant, the operator or room
51 remarketer shall not be liable to the city for such taxes. The
52 provisions of this paragraph shall apply with respect to leases
53 requested on or after September first, nineteen hundred ninety.

54 c. No tax shall be imposed under this chapter upon any organization
55 described in subdivision (a) of section eleven hundred sixteen of the
56 tax law to the extent such organization is not subject to the tax

1 imposed under subdivision (e) of section eleven hundred five of the tax
2 law.

3 d. (1) No tax shall be imposed under this chapter upon any person
4 occupying any room or rooms in a hotel solely and directly as a result
5 of such person's involuntary displacement from premises by the attack on
6 the World Trade Center on September eleventh, two thousand one, provided
7 such premises were not subject to the tax imposed by this section or the
8 tax imposed under section eleven hundred seven of the tax law.

9 (2) Where an occupant claims exemption from the tax under the
10 provisions of paragraph one of this subdivision, the rent shall be
11 deemed taxable under this chapter unless the operator shall receive from
12 the occupant claiming such exemption a signed written statement describ-
13 ing the specific circumstances providing the basis for such claim and
14 containing such other information as the commissioner of finance may
15 require. The operator shall retain such statement and provide it to the
16 commissioner of finance upon request.

17 e. Where any corporation, or association, or trust, or community
18 chest, fund or foundation, organized and operated exclusively for reli-
19 gious, charitable, or educational purposes, or for the prevention of
20 cruelty to children or animals, and no part of the net earnings of which
21 inures to the benefit of any private shareholder or individual and no
22 substantial part of the activities of which is carrying on propaganda,
23 or otherwise attempting to influence legislation, carries on its activ-
24 ities in furtherance of any of the purposes for which it was organized,
25 in premises in which, as part of said activities, it operates a hotel,
26 occupancy of rooms in said premises and rents therefrom received by such
27 corporation or association shall not be subject to tax under this chap-
28 ter. Nothing in this subdivision shall be deemed to include an organ-
29 ization operated for the primary purpose of carrying on a trade or busi-
30 ness for profit, whether or not all of its profits are payable to one or
31 more organizations described in this subdivision.

32 f. The tax to be collected shall be stated and charged separately from
33 the rent and shown separately on any record thereof, at the time when
34 the occupancy is arranged or contracted for and charged for and upon
35 every evidence of occupancy or any bill or statement or charge made for
36 said occupancy issued or delivered by the operator or room remarketer.

37 (1) Where an occupant rents a room directly from an operator, the tax
38 shall be paid by the occupant to the operator as trustee for and on
39 account of the city, and the operator shall be liable for the collection
40 of the tax on the rent and for the payment of the tax on the rent.

41 (2) The operator or room remarketer and any officer of any corporate
42 operator or room remarketer shall be personally liable for the portion
43 of the tax collected or required to be collected under this chapter, and
44 the operator shall have the same right in respect to collecting the tax
45 from the occupant, or in respect to nonpayment of the tax by the occu-
46 pant as if the tax were a part of the rent for the occupancy payable at
47 the time such tax shall become due and owing, including all rights of
48 eviction, dispossession, repossession and enforcement of any innkeeper's
49 lien that he or she may have in the event of nonpayment of rent by the
50 occupant; provided however, that the commissioner of finance shall be
51 joined as a party in any action or proceeding brought by the operator to
52 collect or enforce collection of the tax.

53 g. Where the occupant has failed to pay and the operator or room
54 remarketer has failed to collect a tax as imposed by this chapter, then
55 in addition to all other rights, obligations and remedies provided, such
56 tax shall be payable by the occupant directly to the commissioner of

1 finance, and it shall be the duty of the occupant to file a return ther-
2 eof with the commissioner of finance and to pay the tax imposed therein
3 to the commissioner of finance within fifteen days after such tax was
4 due.

5 h. The commissioner of finance may, wherever he or she deems it neces-
6 sary for the proper enforcement of this chapter, provide by regulation
7 that the occupant shall file returns and pay directly to the commis-
8 sioner of finance the tax imposed by this chapter, at such times as returns
9 are required to be filed and payment over made by the operator or room
10 remarketer.

11 i. The tax imposed by this chapter shall be paid upon any occupancy on
12 and after July first, nineteen hundred seventy, although such occupancy
13 is had pursuant to a contract, lease or other arrangement made prior to
14 such effective date. Where rent is paid, or charged or billed, or falls
15 due on either a weekly, monthly, or other term basis, the rent so paid,
16 charged, billed or falling due shall be subject to the tax imposed by
17 this chapter to the extent that it covers any portion of the period on
18 and after July first, nineteen hundred seventy, and such payment, bill,
19 charge or rent due shall be apportioned on the basis of the ratio of the
20 number of days falling within said period, to the total number of days
21 covered thereby. Where any tax has been paid pursuant to this chapter
22 upon any rent which has been ascertained to be worthless, the commis-
23 sioner of finance may by regulation provide for credit or refund of the
24 amount of such tax upon application therefor as provided in section
25 11-2507 of this chapter.

26 j. For the purpose of the proper administration of this chapter and to
27 prevent evasion of the tax hereby imposed, it shall be presumed that all
28 rents are subject to tax until the contrary is established, and the
29 burden of proving that a rent for occupancy is not taxable under this
30 chapter shall be upon the operator, the room remarketer, or the occu-
31 pant. Where an occupant claims exemption from the tax under the
32 provisions of subdivision c of this section, the rent shall be deemed
33 taxable under this chapter unless the operator or room remarketer shall
34 receive from the occupant claiming such exemption a copy of the exempt
35 organization certificate that is necessary to obtain exemption from the
36 tax imposed under subdivision (e) of section eleven hundred five of the
37 tax law, together with a certificate duly executed by the organization
38 named in such certificate certifying that the occupant is its agent,
39 representative or employee and that his or her occupancy is paid or to
40 be paid by, and is necessary or required in the course of or in
41 connection with the affairs of said organization.

42 k. No operator or room remarketer shall advertise or hold out to the
43 public in any manner, directly or indirectly, that the tax imposed by
44 this chapter is not considered as a mandatory addition to the rent
45 charged to the occupant.

46 l. An occupancy that an operator conveys or furnishes to a room
47 remarketer that the room remarketer intends to convey or furnish,
48 directly or indirectly, to an occupant for rent shall be exempt from the
49 taxes imposed by this section, provided that such room remarketer
50 furnishes the operator with a certificate in such form and containing
51 such information as may be prescribed by the commissioner of finance.
52 The operator shall retain such statement and provide it to the commis-
53 sioner of finance upon request.

54 § 11-2503 Records to be kept. a. Every operator and every room
55 remarketer shall keep records of every occupancy and of all rent paid,
56 charged or due thereon and of the tax payable thereon, in such form as

1 the commissioner of finance may by regulation require. Such records
2 shall be available for inspection and examination at any time upon
3 demand by the commissioner of finance or his or her duly authorized
4 agent or employee and shall be preserved for a period of three years,
5 except that the commissioner of finance may consent to their destruction
6 within that period or may require that they be kept longer.

7 b. Notwithstanding the provisions of sections three hundred five and
8 three hundred nine of the state technology law or any other law, the
9 commissioner may require any person who has elected to maintain in an
10 electronic format any portion of the records required to be maintained
11 by that person under this chapter, to make the electronic records avail-
12 able and accessible to the commissioner, notwithstanding that the
13 records are also maintained in a hard copy format.

14 § 11-2504 Returns. a. Every operator and every room remarketer shall
15 file with the commissioner of finance a return of occupancy and of
16 rents, and of the taxes payable thereon, for the quarterly periods
17 ending on the last day of February, May, August and November of each
18 year. Such returns shall be filed within twenty days after the end of
19 the quarterly period covered thereby. The commissioner of finance may
20 permit or require returns to be made by other periods and upon such
21 dates as he or she may specify. If the commissioner of finance deems it
22 necessary in order to insure the payment of the tax imposed by this
23 chapter, he or she may require returns to be made for shorter periods
24 than those prescribed pursuant to the provisions of this subdivision and
25 upon such dates as he or she may specify.

26 b. The forms of returns shall be prescribed by the commissioner of
27 finance and shall contain such information as he or she may deem neces-
28 sary for the proper administration of this chapter. The commissioner of
29 finance may require amended returns to be filed within twenty days after
30 notice and to contain the information specified in the notice.

31 c. If a return required by this chapter is not filed or if a return
32 when filed is incorrect or insufficient on its face the commissioner of
33 finance shall take the necessary steps to enforce the filing of such a
34 return or a corrected return.

35 § 11-2505 Payment of tax. At the time of filing a return of occupancy
36 and of rents each operator and room remarketer shall pay to the commis-
37 sioner of finance the taxes imposed by this chapter upon the rents
38 required to be included in such return, as well as all other moneys
39 collected by the operator or room remarketer acting or purporting to act
40 under the provisions of this chapter, even though it be judicially
41 determined that the tax collected is invalidly imposed. All the taxes
42 for the period for which a return is required to be filed shall be due
43 from the operator or room remarketer and payable to the commissioner of
44 finance on the date limited for the filing of the return for such peri-
45 od, without regard to whether a return is filed or whether the return
46 which is filed correctly shows the amount of rents and the taxes due
47 thereon. Where the commissioner of finance in his or her discretion
48 deems it necessary to protect revenues to be obtained under this chapter
49 he or she may require any operator or room remarketer required to
50 collect the tax imposed by this chapter to file with him or her a bond,
51 issued by a surety company authorized to transact business in this state
52 and approved by the superintendent of insurance of this state as to
53 solvency and responsibility, in such amount as the commissioner of
54 finance may fix, to secure the payment of any tax or penalties and
55 interest due or which may become due from such operator or room remark-
56 eter. In the event that the commissioner of finance determines that an

1 operator or room remarketer is to file such bond he or she shall give
2 notice to such operator or room remarketer to that effect specifying the
3 amount of the bond required. The operator or room remarketer shall file
4 such bond within five days after the giving of such notice unless within
5 such five days the operator or room remarketer shall request in writing
6 a hearing before the commissioner of finance at which the necessity,
7 propriety and amount of the bond shall be determined by the commissioner
8 of finance. Such determination shall be final and shall be complied with
9 within fifteen days after the giving of notice thereof. In lieu of such
10 bond, securities approved by the commissioner of finance or cash in such
11 amount as he or she may prescribe, may be deposited which shall be kept
12 in the custody of the commissioner of finance who may at any time with-
13 out notice to the depositor apply them to any tax or interest or penal-
14 ties due, and for that purpose the securities may be sold by him or her
15 at public or private sale without notice to the depositor thereof.

16 § 11-2506 Determination of tax. If a return required by this chapter
17 is not filed, or if a return when filed is incorrect or insufficient,
18 the amount of tax due shall be determined by the commissioner of finance
19 from such information as may be obtainable and, if necessary, the tax
20 may be estimated on the basis of external indices, such as number of
21 rooms, location, scale of rents, comparable rents, type of accommo-
22 dations and service, number of employees or other factors. Notice of
23 such determination shall be given to the person liable for the
24 collection and/or payment of the tax. Such determination shall finally
25 and irrevocably fix the tax unless the person against whom it is
26 assessed, within ninety days after giving of notice of such determi-
27 nation, or, if the commissioner of finance has established a concil-
28 iation procedure pursuant to section 11-124 of the code of the preceding
29 municipality and the taxpayer has requested a conciliation conference in
30 accordance therewith, within ninety days from the mailing of a concil-
31 iation decision or the date of the commissioner's confirmation of the
32 discontinuance of the conciliation proceeding, both (1) serves a peti-
33 tion upon the commissioner of finance and (2) files a petition with the
34 tax appeals tribunal for a hearing, or unless the commissioner of
35 finance of his or her own motion shall redetermine the same. Such hear-
36 ing and any appeal to the tax appeals tribunal sitting en banc from the
37 decision rendered in such hearing shall be conducted in the manner and
38 subject to the requirements prescribed by the tax appeals tribunal
39 pursuant to sections one hundred sixty-eight through one hundred seven-
40 ty-two of the charter of the preceding municipality as it existed Janu-
41 ary first, nineteen hundred ninety-four. After such hearing the tax
42 appeals tribunal shall give notice of its decision to the person against
43 whom the tax is assessed. A decision of the tax appeals tribunal
44 sitting en banc shall be reviewable for error, illegality or unconstitu-
45 tionality or any other reason whatsoever by a proceeding under article
46 seventy-eight of the civil practice law and rules if application there-
47 for is made to the supreme court by the person against whom the tax was
48 assessed, within four months after the giving of the notice of such tax
49 appeals tribunal decision. A proceeding under article seventy-eight of
50 the civil practice law and rules shall not be instituted by a person
51 liable for the tax unless: (a) the amount of any tax sought to be
52 reviewed, with penalties and interest thereon, if any, shall be first
53 deposited with the commissioner of finance and there shall be filed with
54 the commissioner of finance an undertaking, issued by a surety company
55 authorized to transact business in this state and approved by the super-
56 intendent of insurance of this state as to solvency and responsibility,

1 in such amount as a justice of the supreme court shall approve, to the
2 effect that if such proceeding be dismissed or the tax confirmed, such
3 person will pay all costs and charges which may accrue in the prose-
4 cution of the proceeding; or (b) at the option of such person such
5 undertaking filed with the commissioner of finance may be in a sum
6 sufficient to cover the taxes, penalties and interest thereon stated in
7 such decision plus the costs and charges which may accrue against it in
8 the prosecution of the proceeding, in which event such person shall not
9 be required to deposit such taxes, penalties and interest as a condition
10 precedent to the application.

11 § 11-2507 Refunds. a. In the manner provided in this section the
12 commissioner of finance shall refund or credit, without interest, any
13 tax, penalty or interest erroneously, illegally or unconstitutionally
14 collected or paid if written application to the commissioner of finance
15 for such refund shall be made within one year from the payment thereof.
16 Whenever a refund or credit is made or denied by the commissioner of
17 finance, he or she shall state his or her reasons therefor and give
18 notice thereof to the taxpayer in writing. Such application may be made
19 by the occupant, operator, room remarketer or other person who has actu-
20 ally paid the tax to the commissioner of finance. Such application may
21 also be made by an operator or room remarketer who has collected and
22 paid over such tax to the commissioner of finance provided that the
23 application is made within one year of the payment by the occupant to
24 the operator or room remarketer, but no actual refund of moneys shall be
25 made to such operator or room remarketer until he or she shall first
26 establish to the satisfaction of the commissioner of finance, under such
27 regulations as the commissioner of finance may prescribe, that he or she
28 has repaid to the occupant the amount for which the application for
29 refund is made. The commissioner of finance may, in lieu of any refund
30 required to be made, allow credit therefor on payments due from the
31 applicant.

32 b. Any determination of the commissioner of finance denying a refund
33 or credit pursuant to subdivision a of this section shall be final and
34 irrevocable unless the applicant for such refund or credit, within nine-
35 ty days from the mailing of notice of such determination, or, if the
36 commissioner of finance has established a conciliation procedure pursu-
37 ant to section 11-124 of the code of the preceding municipality and the
38 applicant has requested a conciliation conference in accordance there-
39 with, within ninety days from the mailing of a conciliation decision or
40 the date of the commissioner's confirmation of the discontinuance of the
41 conciliation proceeding, both (1) serves a petition upon the commission-
42 er of finance and (2) files a petition with the tax appeals tribunal for
43 a hearing. Such petition for a refund or credit, made as provided in
44 this section, shall be deemed an application for a revision of any tax,
45 penalty or interest complained of. Such hearing and any appeal to the
46 tax appeals tribunal sitting en banc from the decision rendered in such
47 hearing shall be conducted in the manner and subject to the requirements
48 prescribed by the tax appeals tribunal pursuant to sections one hundred
49 sixty-eight through one hundred seventy-two of the charter of the
50 preceding municipality as it existed January first, nineteen hundred
51 ninety-four. After such hearing, the tax appeals tribunal shall give
52 notice of its decision to the applicant and to the commissioner of
53 finance. The applicant shall be entitled to review such decision of the
54 tax appeals tribunal sitting en banc by a proceeding pursuant to article
55 seventy-eight of the civil practice law and rules, provided such
56 proceeding is instituted within four months after the giving of the

1 notice of such decision, and provided, in the case of an application by
2 a person liable for the tax, that a final determination of tax was not
3 previously made. Such a proceeding shall not be instituted by a person
4 liable for the tax unless an undertaking is filed with the commissioner
5 of finance in such amount and with such sureties as a justice of the
6 supreme court shall approve to the effect that if such proceeding be
7 dismissed or the tax confirmed, such person will pay all costs and
8 charges which may accrue in the prosecution of such proceeding.

9 c. A person shall not be entitled to a revision, refund or credit
10 under this section of a tax, interest or penalty which had been deter-
11 mined to be due pursuant to the provisions of section 11-2506 of this
12 chapter where he or she has had a hearing or an opportunity for a hear-
13 ing, as provided in said section, or has failed to avail himself or
14 herself of the remedies therein provided. No refund or credit shall be
15 made of a tax, interest or penalty paid after a determination by the
16 commissioner of finance made pursuant to section 11-2506 of this chapter
17 unless it be found that such determination was erroneous, illegal or
18 unconstitutional or otherwise improper, by the tax appeals tribunal
19 after a hearing or of the commissioner of finance's own motion, or, if
20 such tax appeals tribunal affirms in whole or in part the determination
21 of the commissioner of finance, in a proceeding under article seventy-
22 eight of the civil practice law and rules, pursuant to the provision of
23 said section, in which event refund or credit without interest shall be
24 made of the tax, interest or penalty found to have been overpaid.

25 § 11-2508 Reserves. In cases where the occupant, operator or room
26 remarketer has applied for a refund and has instituted a proceeding
27 under article seventy-eight of the civil practice law and rules to
28 review a determination adverse to such occupant, operator or room
29 remarketer on his or her application for refund, the comptroller shall
30 set up appropriate reserves to meet any decision adverse to the city.

31 § 11-2509 Remedies exclusive. The remedies provided by sections
32 11-2506 and 11-2507 of this chapter shall be the exclusive remedies
33 available to any person for the review of tax liability imposed by this
34 chapter; and no determination or proposed determination of tax or deter-
35 mination on any application for refund by the commissioner of finance,
36 nor any decision by the tax appeals tribunal or any of its administra-
37 tive law judges, shall be enjoined or reviewed by an action for declara-
38 tory judgment, and action for money had and received or by any action or
39 proceeding other than, in the case of a decision by the tax appeals
40 tribunal sitting en banc, a proceeding in the nature of a certiorari
41 proceeding under article seventy-eight of the civil practice law and
42 rules; provided, however, that a taxpayer may proceed by declaratory
43 judgment if he or she institutes suit within thirty days after a defi-
44 ciency assessment is made and pays the amount of the deficiency assess-
45 ment to the commissioner of finance prior to the institution of such
46 suit and posts a bond for costs as provided in section 11-2506 of this
47 chapter.

48 § 11-2510 Proceedings to recover tax. a. Whenever any operator or room
49 remarketer or any officer of a corporate operator or room remarketer or
50 any occupant or other person shall fail to collect and pay over any tax
51 and/or to pay any tax, penalty or interest imposed by this chapter as
52 provided, the corporation counsel shall, upon the request of the commis-
53 sioner of finance bring or cause to be brought an action to enforce the
54 payment of the same on behalf of the city of Staten Island in any court
55 of the state of New York or of any other state or of the United States.
56 If, however, the commissioner of finance in his or her discretion

1 believes that any such operator, or room remarketer, officer, occupant
2 or other person is about to cease business, leave the state or remove or
3 dissipate the assets out of which the tax, penalties or interest might
4 be satisfied, and that any such tax, penalty or interest will not be
5 paid when due, he or she may declare such tax, penalty or interest to be
6 immediately due and payable and may issue a warrant immediately.

7 b. As an additional or alternate remedy, the commissioner of finance
8 may issue a warrant, directed to the city sheriff commanding him or her
9 to levy upon and sell the real and personal property of the operator or
10 room remarketer or officer of a corporate operator or room remarketer or
11 of the occupant or other person liable for the tax, which may be found
12 within the city for the payment of the amount thereof, with any penal-
13 ties and interest, and the cost of executing the warrant, and to return
14 such warrant to the commissioner of finance and to pay to him or her the
15 money collected by virtue thereof within sixty days after the receipt of
16 such warrant. The city sheriff shall within five days after the receipt
17 of the warrant file with the county clerk a copy thereof, and thereupon
18 such clerk shall enter in the judgment docket the name of the person
19 mentioned in the warrant and the amount of the tax, penalties and inter-
20 est for which the warrant is issued and the date when such copy is
21 filed. Thereupon the amount of such warrant so docketed shall become a
22 lien upon the title to and interest in real and personal property of the
23 person against whom the warrant is issued. The city sheriff shall then
24 proceed upon the warrant, in the same manner, and with like effect, as
25 that provided by law in respect to executions issued against property
26 upon judgments of a court of record, and for services in executing the
27 warrant such sheriff shall be entitled to the same fees, which he or she
28 may collect in the same manner. In the discretion of the commissioner of
29 finance a warrant of like terms, force and effect may be issued and
30 directed to any officer or employee of the department of finance, and in
31 the execution thereof such officer or employee shall have all the powers
32 conferred by law upon sheriffs, but shall be entitled to no fee or
33 compensation in excess of the actual expenses paid in the performance of
34 such duty. If a warrant is returned not satisfied in full, the commis-
35 sioner of finance may from time to time issue new warrants and shall
36 also have the same remedies to enforce the amount due thereunder as if
37 the city had recovered judgment therefor and execution thereon had been
38 returned unsatisfied.

39 c. Whenever an operator shall make a sale, transfer, or assignment in
40 bulk of any part or the whole of such operator's hotel or of his or her
41 lease, license or other agreement or right to possess or operate such
42 hotel, or of the equipment, furnishings, fixtures, supplies or stock of
43 merchandise, or of the said premises or lease, license or other agree-
44 ment or right to possess or operate such hotel and the equipment,
45 furnishings, fixtures, supplies and stock of merchandise pertaining to
46 the conduct or operation of said hotel, otherwise than in the ordinary
47 and regular prosecution of business, the purchaser, transferee or assign-
48 nee shall at least ten days before taking possession of the subject of
49 said sale, transfer or assignment, or paying therefor, notify the
50 commissioner of finance by registered mail of the proposed sale and of
51 the price, terms and conditions thereof whether or not the seller,
52 transferor or assignor, has represented to, or informed the purchaser,
53 transferee or assignee that it owes any tax pursuant to this chapter,
54 and whether or not the purchaser, transferee or assignee has knowledge
55 that such taxes are owing, and whether any such taxes are in fact owing.

1 Whenever the purchaser, transferee or assignee shall fail to give
2 notice to the commissioner of finance as required by the opening para-
3 graph of this subdivision, or whenever the commissioner of finance shall
4 inform the purchaser, transferee or assignee that a possible claim for
5 such tax or taxes exists, any sums of money, property or choses in
6 action, or other consideration, which the purchaser, transferee or
7 assignee is required to transfer over to the seller, transferor or
8 assignor shall be subject to a first priority right and lien for any
9 such taxes theretofore or thereafter determined to be due from the sell-
10 er, transferor or assignor to the city, and the purchaser, transferee or
11 assignee is forbidden to transfer to the seller, transferor or assignor
12 any such sums of money, property or choses in action to the extent of
13 the amount of the city's claim. For failure to comply with the
14 provisions of this subdivision, the purchaser, transferee or assignee,
15 in addition to being subject to the liabilities and remedies imposed
16 under the provisions of article six of the uniform commercial code,
17 shall be personally liable for the payment to the city of any such taxes
18 theretofore or thereafter determined to be due to the city from the
19 seller, transferor or assignor, and such liability may be assessed and
20 enforced in the same manner as the liability for tax under this chapter.

21 d. The commissioner of finance, if he or she finds that the interests
22 of the city will not thereby be jeopardized, and upon such conditions as
23 the commissioner of finance may require, may release any property from
24 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
25 tions to tax, penalties and interest filed pursuant to subdivision b of
26 this section, and such release or vacating of the warrant may be
27 recorded in the office of any recording officer in which such warrant
28 has been filed. The clerk shall thereupon cancel and discharge as of the
29 original date of docketing the vacated warrant.

30 § 11-2511 General powers of the commissioner of finance. In addition
31 to the powers granted to the commissioner of finance in this chapter, he
32 or she is hereby authorized and empowered:

33 1. To make, adopt and amend rules and regulations appropriate to the
34 carrying out of this chapter and the purposes thereof;

35 2. To extend, for cause shown, the time for filing any return for a
36 period not exceeding thirty days; and to compromise disputed claims in
37 connection with the taxes hereby imposed;

38 3. To request information from the tax commission of the state of New
39 York or the treasury department of the United States relative to any
40 person; and to afford information to such tax commission or such treas-
41 ury department relative to any person, any other provision of this chap-
42 ter to the contrary notwithstanding;

43 4. To delegate his or her functions under this section to a commis-
44 sioner or deputy commissioner in the department of finance or to any
45 employee or employees of the department of finance;

46 5. To prescribe methods for determining the rents for occupancy and to
47 determine the taxable and non-taxable rents;

48 6. To require any operator within the city to keep detailed records of
49 the nature and type of hotel maintained and the nature and type of
50 service rendered, and to require any operator or room remarketer to keep
51 detailed records of the rooms available and rooms occupied daily, leases
52 or occupancy contracts or arrangements, rents received, charged and
53 accrued, the names and addresses of the occupants, whether or not any
54 occupancy is claimed to be subject to the tax imposed by this chapter,
55 and to furnish such information upon request to the commissioner of
56 finance;

1 7. To assess, determine, revise and readjust the taxes imposed under
2 this chapter.

3 § 11-2512 Administration of oaths and compelling testimony. a. The
4 commissioner of finance, his or her employees or agents duly designated
5 and authorized by him or her, the tax appeals tribunal and any of its
6 duly designated and authorized employees or agents shall have power to
7 administer oaths and take affidavits in relation to any matter or
8 proceeding in the exercise of their powers and duties under this chap-
9 ter. The commissioner of finance and the tax appeals tribunal shall
10 have power to subpoena and require the attendance of witnesses and the
11 production of books, papers and documents to secure information perti-
12 nent to the performance of the duties of the commissioner or the tax
13 appeals tribunal under this chapter and of the enforcement of this chap-
14 ter and to examine them in relation thereto, and to issue commissions
15 for the examination of witnesses who are out of the state or unable to
16 attend before such commissioner or tax appeals tribunal or excused from
17 attendance.

18 b. A justice of the supreme court either in court or at chambers shall
19 have power summarily to enforce by proper proceedings the attendance and
20 testimony of witnesses and the production and examination of books,
21 papers and documents called for by the subpoena of the commissioner of
22 finance or the tax appeals tribunal under this chapter.

23 c. Cross-reference; criminal penalties. For failure to obey subpoenas
24 or for testifying falsely, see section 11-4007 of this title; for
25 supplying false or fraudulent information, see section 11-4009 of this
26 title.

27 d. The officers who serve the summons or subpoena of the commissioner
28 of finance or the tax appeals tribunal and witnesses attending in
29 response thereto shall be entitled to the same fees as are allowed to
30 officers and witnesses in civil cases in courts of record, except as
31 otherwise provided under this section. Such officers shall be the city
32 sheriff and his or her duly appointed deputies or any officers or
33 employees of the department of finance or the tax appeals tribunal,
34 designated to serve such process.

35 § 11-2513 Reference to tax. Whenever reference is made in placards
36 or advertisements or in any other publication to this tax, such refer-
37 ence shall be substantially in the following form: "city tax on occupan-
38 cy of hotel rooms", except that in any bill, receipt, statement or other
39 evidence or memorandum of occupancy or rent charge issued or employed by
40 the operator the words "city tax" will suffice.

41 § 11-2514 Registration. By June thirtieth, nineteen hundred seventy,
42 or in the case of operators or room remarketers commencing business or
43 opening new hotels after such date, within three days after such
44 commencement or opening, every operator or room remarketer shall file
45 with the commissioner of finance a certificate of registration in a form
46 prescribed by the commissioner of finance. The commissioner of finance
47 shall within five days after such registration issue without charge to
48 each operator or room remarketer a certificate of authority empowering
49 such operator or room remarketer to collect the tax from the occupant
50 and duplicate thereof for each additional hotel of such operator or room
51 remarketer. Each certificate or duplicate shall state the hotel to
52 which it is applicable. Such certificates of authority shall be promi-
53 nently displayed by the operator or room remarketer in such manner that
54 it may be seen and come to the notice of all occupants and persons seek-
55 ing occupancy. Such certificates shall be non-assignable and nontrans-
56 ferable and shall be surrendered immediately to the commissioner of

1 finance upon the cessation of business at the hotel named or upon its
2 sale or transfer, or upon cessation of business of the named room
3 remarketer.

4 § 11-2515 Interest and penalties. (a) Interest on underpayments. If
5 any amount of tax is not paid or paid over on or before the last date
6 prescribed for payment, without regard to any extension of time granted
7 for payment, interest on such amount at the rate set by the commissioner
8 of finance pursuant to subdivision (g) of this section, or, if no rate
9 is set, at the rate of seven and one-half percent per annum, shall be
10 paid for the period from such last date to the date of payment. In
11 computing the amount of interest to be paid, such interest shall be
12 compounded daily. Interest under this subdivision shall not be paid if
13 the amount thereof is less than one dollar.

14 (b) (1) Failure to file return. (A) In case of failure to file a
15 return under this chapter on or before the prescribed date, determined
16 with regard to any extension of time for filing, unless it is shown that
17 such failure is due to reasonable cause and not due to willful neglect,
18 there shall be added to the amount required to be shown as tax on such
19 return five percent of the amount of such tax if the failure is for not
20 more than one month, with an additional five percent for each additional
21 month or fraction thereof during which such failure continues, not
22 exceeding twenty-five percent in the aggregate.

23 (B) In the case of a failure to file a return of tax within sixty days
24 of the date prescribed for filing of such return, determined with regard
25 to any extension of time for filing, unless it is shown that such fail-
26 ure is due to reasonable cause and not due to willful neglect, the addi-
27 tion to tax under subparagraph (A) of this paragraph shall not be less
28 than the lesser of one hundred dollars or one hundred percent of the
29 amount required to be shown as tax on such return.

30 (C) For purposes of this paragraph, the amount of tax required to be
31 shown on the return shall be reduced by the amount of any part of the
32 tax which is paid on or before the date prescribed for payment of the
33 tax and by the amount of any credit against the tax which may be claimed
34 upon the return.

35 (2) Failure to pay tax shown on return. In case of failure to pay the
36 amount shown as tax on a return required to be filed under this chapter
37 on or before the prescribed date, determined with regard to any exten-
38 sion of time for payment, unless it is shown that such failure is due to
39 reasonable cause and not due to willful neglect, there shall be added to
40 the amount shown as tax on such return one-half of one percent of the
41 amount of such tax if the failure is not for more than one month, with
42 an additional one-half of one percent for each additional month or frac-
43 tion thereof during which such failure continues, not exceeding twenty-
44 five percent in the aggregate. For the purpose of computing the addition
45 for any month the amount of tax shown on the return shall be reduced by
46 the amount of any part of the tax which is paid on or before the begin-
47 ning of such month and by the amount of any credit against the tax which
48 may be claimed upon the return. If the amount of tax required to be
49 shown on a return is less than the amount shown as tax on such return,
50 this paragraph shall be applied by substituting such lower amount.

51 (3) Failure to pay tax required to be shown on return. In case of
52 failure to pay any amount in respect of any tax required to be shown on
53 a return required to be filed under this chapter which is not so shown,
54 including a determination made pursuant to section 11-2506 of this chap-
55 ter, within ten days of the date of a notice and demand therefor, unless
56 it is shown that such failure is due to reasonable cause and not due to

1 willful neglect, there shall be added to the amount of tax stated in
2 such notice and demand one-half of one percent of such tax if the fail-
3 ure is not for more than one month, with an additional one-half of one
4 percent for each additional month or fraction thereof during which such
5 failure continues, not exceeding twenty-five percent in the aggregate.
6 For the purpose of computing the addition for any month, the amount of
7 tax stated in the notice and demand shall be reduced by the amount of
8 any part of the tax which is paid before the beginning of such month.

9 (4) Limitations on additions.

10 (A) With respect to any return, the amount of the addition under para-
11 graph one of this subdivision shall be reduced by the amount of the
12 addition under paragraph two of this subdivision for any month to which
13 an addition applies under both paragraphs one and two. In any case
14 described in subparagraph (B) of paragraph one of this subdivision, the
15 amount of the addition under such paragraph one shall not be reduced
16 below the amount provided in such paragraph.

17 (B) With respect to any return, the maximum amount of the addition
18 permitted under paragraph three of this subdivision shall be reduced by
19 the amount of the addition under paragraph one of this subdivision,
20 determined without regard to subparagraph (B) of such paragraph one,
21 which is attributable to the tax for which the notice and demand is made
22 and which is not paid within ten days of such notice and demand.

23 (c) Underpayment due to negligence. (1) If any part of an underpayment
24 of tax is due to negligence or intentional disregard of this chapter or
25 any rules or regulations related thereto, but without intent to defraud,
26 there shall be added to the tax a penalty equal to five percent of the
27 underpayment.

28 (2) There shall be added to the tax, in addition to the amount deter-
29 mined under paragraph one of this subdivision, an amount equal to fifty
30 percent of the interest payable under subdivision (a) of this section
31 with respect to the portion of the underpayment described in such para-
32 graph one which is attributable to the negligence or intentional disre-
33 gard referred to in such paragraph one, for the period beginning on the
34 last date prescribed by law for payment of such underpayment, determined
35 without regard to any extension, and ending on the date of the assess-
36 ment of the tax, or, if earlier, the date of the payment of the tax.

37 (d) Underpayment due to fraud. (1) If any part of an underpayment of
38 tax is due to fraud, there shall be added to the tax a penalty equal to
39 two times of the underpayment.

40 (2) The penalty under this subdivision shall be in lieu of any other
41 addition to tax imposed by subdivision (b) or (c) of this section.

42 (e) Additional penalty. Any person who, with fraudulent intent, shall
43 fail to pay any tax imposed by this chapter, or to make, render, sign or
44 certify any return, or to supply any information within the time
45 required by or under this chapter, shall be liable for a penalty of not
46 more than one thousand dollars, in addition to any other amounts
47 required under this chapter to be imposed, assessed and collected by the
48 commissioner of finance. The commissioner of finance shall have the
49 power, in his or her discretion, to waive, reduce or compromise any
50 penalty under this subdivision.

51 (f) The interest and penalties imposed by this section shall be paid
52 and disposed of in the same manner as other revenues from this chapter.
53 Unpaid interest and penalties may be enforced in the same manner as the
54 tax imposed by this chapter.

55 (g)(1) Authority to set interest rates. The commissioner of finance
56 shall set the rate of interest to be paid pursuant to subdivision (a) of

1 this section, but if no such rate of interest is set, such rate shall be
2 deemed to be set at seven and one-half percent per annum. Such rate
3 shall be the rate prescribed in paragraph two of this subdivision but
4 shall not be less than seven and one-half percent per annum. Any such
5 rate set by the commissioner of finance shall apply to taxes, or any
6 portion thereof, which remain or become due on or after the date on
7 which such rate becomes effective and shall apply only with respect to
8 interest computed or computable for periods or portions of periods
9 occurring in the period in which such rate is in effect.

10 (2) General rule. The rate of interest set under this subdivision
11 shall be the sum of (i) the federal short-term rate as provided under
12 paragraph three of this subdivision, plus (ii) seven percentage points.

13 (3) Federal short-term rate. For purposes of this subdivision:

14 (A) The federal short-term rate for any month shall be the federal
15 short-term rate determined by the United States secretary of the treas-
16 ury during such month in accordance with subsection (d) of section
17 twelve hundred seventy-four of the internal revenue code for use in
18 connection with section six thousand six hundred twenty-one of the
19 internal revenue code. Any such rate shall be rounded to the nearest
20 full percent, or, if a multiple of one-half of one percent, such rate
21 shall be increased to the next highest full percent.

22 (B) Period during which rate applies.

23 (i) In general. Except as provided in clause (ii) of this subpara-
24 graph, the federal short-term rate for the first month in each calendar
25 quarter shall apply during the first calendar quarter beginning after
26 such month.

27 (ii) Special rule for the month of September, nineteen hundred eight-
28 y-nine. The federal short-term rate for the month of April, nineteen
29 hundred eighty-nine shall apply with respect to setting the rate of
30 interest for the month of September, nineteen hundred eighty-nine.

31 (4) Publication of interest rate. The commissioner of finance shall
32 cause to be published in the City Record, and give other appropriate
33 general notice of, the interest rate to be set under this subdivision no
34 later than twenty days preceding the first day of the calendar quarter
35 during which such interest rate applies. The setting and publication of
36 such interest rate shall not be included within paragraph (a) of subdi-
37 vision five of section one thousand forty-one of the city charter of the
38 preceding municipality as it existed January first, nineteen hundred
39 ninety-four relating to the definition of a rule.

40 (h) Miscellaneous. (1) Officers of a corporate operator or room
41 remarketer and partners in a partnership which is an operator or room
42 remarketer shall be personally liable for the tax collected or required
43 to be collected by such corporation or partnership under this chapter,
44 and subject to the penalties and interest imposed by this section.

45 (2) The certificate of the commissioner of finance to the effect that
46 a tax has not been paid, that a return, bond or registration certificate
47 has not been filed, or that information has not been supplied pursuant
48 to the provisions of this chapter, shall be presumptive evidence there-
49 of.

50 (3) Cross-reference: For criminal penalties, see chapter forty of this
51 title.

52 (i) Any person required to make or maintain records under this chapter
53 who fails to make or maintain or make available to the commissioner
54 these records is subject to a penalty not to exceed one thousand dollars
55 for the first quarterly period or part thereof for which the failure
56 occurs and not to exceed five thousand dollars for each additional quar-

1 terly period or part thereof for which the failure occurs. This penalty
2 is in addition to any other penalty provided for in this chapter but may
3 not be imposed and collected more than once for failures for the same
4 quarterly period or part thereof. If the commissioner determines that a
5 failure to make or maintain or make available records in any quarterly
6 period was entirely due to reasonable cause and not to willful neglect,
7 the commissioner must remit the penalty imposed for that quarterly peri-
8 od. These penalties will be paid and disposed of in the same manner as
9 other revenues from this chapter. These penalties will be determined,
10 assessed, collected, paid and enforced in the same manner as the tax
11 imposed by this chapter, and all the provisions of this chapter relating
12 to tax will be deemed also to apply to the penalties imposed by this
13 subdivision. For purposes of the penalty imposed by this subdivision, a
14 person will be considered to have failed to make or maintain the
15 required records when the commissioner of finance determines that the
16 records made or maintained by that person for a quarterly period do not
17 enable the commissioner to verify occupancy or the amounts received for
18 such occupancy or the taxability of that occupancy and to conduct a
19 complete audit.

20 (j) Any person required to make or maintain records under this chapter
21 who fails to present and make available these records in an auditable
22 form is subject to a penalty not to exceed one thousand dollars for each
23 quarterly period or part thereof for which records maintained by that
24 person are not presented and made available by that person in auditable
25 form, even if these records are adequate to verify credits, receipts,
26 and the taxability thereof and to perform a complete audit. This penal-
27 ty is in addition to any other penalty provided for in this chapter, but
28 will not be imposed and collected more than once for these failures for
29 the same quarterly period or part thereof. If the commissioner deter-
30 mines that any failure described in this subdivision for a quarterly
31 period was entirely due to reasonable cause and not to willful neglect,
32 the commissioner must remit the penalty imposed for that quarter. The
33 penalties imposed by this subdivision will be paid and disposed of in
34 the same manner as other revenues from this chapter. These penalties
35 will be determined, assessed, collected, paid and enforced in the same
36 manner as the tax imposed by this chapter, and all the provisions of
37 this chapter relating to tax will be deemed also to apply to the penal-
38 ties imposed by this subdivision. For purposes of the penalty imposed by
39 this subdivision, a person will be considered to have failed to present
40 and make records available in auditable form when the records presented
41 by that person for that quarter lack sufficient organization, such as by
42 date, invoice number, sales receipts, or sequential numbering, or are
43 otherwise inadequate, without reorganizing, reordering or otherwise
44 rearranging the records into an auditable form, to permit direct recon-
45 ciliation of the receipts, invoices or other source documents with the
46 entries for the quarterly period in the books and records and on the
47 returns of that person.

48 (k) Any person who, having elected to maintain in an electronic format
49 any portion or all of the records he or she is required to make and
50 maintain by this chapter, fails to present and make these records avail-
51 able and accessible to the commissioner in electronic format, is subject
52 to a penalty not to exceed five thousand dollars for each quarterly
53 period or part thereof for which these electronic records are not
54 presented and made available and accessible upon request, notwithstand-
55 ing that the records may also be maintained and available in hard copy
56 format. This penalty is in addition to any other penalty provided for in

1 this chapter, but may not be imposed and collected more than once for a
2 failure for the same quarterly period or part thereof. Provided, howev-
3 er, nothing in this subdivision will prevent the separate imposition, if
4 applicable, of any penalty imposed by subdivision (i) or (j) of this
5 section for the same quarterly period or part thereof. If the commis-
6 sioner determines that the failure to present and make electronically
7 maintained records available and accessible for a quarterly period was
8 entirely due to reasonable cause and not to willful neglect, the commis-
9 sioner must remit the penalty imposed for that quarter. These penalties
10 will be paid and disposed of in the same manner as other revenues from
11 this chapter. These penalties will be determined, assessed, collected,
12 paid and enforced in the same manner as the tax imposed by this chapter,
13 and all the provisions of this chapter relating to tax will be deemed
14 also to apply to the penalty imposed by this subdivision. For purposes
15 of the penalty imposed by this subdivision, a failure to present and
16 make available and accessible a record maintained in electronic format
17 includes not only the denial of access to the requested records that
18 were maintained electronically, but also the failure to make available
19 to the commissioner the information, knowledge, or means necessary to
20 access and otherwise use the electronically maintained records in the
21 inspection and examination of these records.

22 (l) Aiding or assisting in the giving of fraudulent returns, reports,
23 statements or other documents. Any person who, with the intent that tax
24 be evaded, for a fee or other compensation or as an incident to the
25 performance of other services for which that person receives compen-
26 sation, aids or assists in, or procures, counsels, or advises the prepa-
27 ration or presentation under this chapter, or in connection with any
28 matter arising under this chapter, of any return, report, declaration,
29 statement or other document that is fraudulent or false as to any mate-
30 rial matter, or supplies any false or fraudulent information, whether or
31 not such falsity or fraud is with the knowledge or consent of the person
32 authorized or required to present that return, report, declaration,
33 statement or other document, will pay a penalty not exceeding five thou-
34 sand dollars. The definitions in subsection (l) of section one thousand
35 eighty-five of the tax law apply for the purposes of this penalty.

36 (m) False or fraudulent document penalty. Any taxpayer that submits a
37 false or fraudulent document to the department will be subject to a
38 penalty of one hundred dollars per document submitted, or five hundred
39 dollars per tax return submitted. This penalty will be in addition to
40 any other penalty provided by law.

41 § 11-2516 Returns to be secret. a. Except in accordance with proper
42 judicial order, or as otherwise provided by law, it shall be unlawful
43 for the commissioner of finance, any officer or employee of the depart-
44 ment of finance, any person engaged or retained on an independent
45 contract basis, the tax appeals tribunal, any commissioner or employee
46 of such tribunal, or any person who, pursuant to this section, is
47 permitted to inspect any return or to whom a copy, an abstract or a
48 portion of any return is furnished, or to whom any information contained
49 in any return is furnished, to divulge or make known in any manner the
50 rents or other information relating to the business of a taxpayer
51 contained in any return required under this chapter. The officers
52 charged with the custody of such returns shall not be required to
53 produce any of them or evidence of anything contained in them in any
54 action or proceeding in any court, except on behalf of the commissioner
55 of finance in an action or proceeding under the provisions of this chap-
56 ter or on behalf of any party to any action or proceeding under the

1 provisions of this chapter when the returns or facts shown thereby are
2 directly involved in such action or proceeding, in either of which
3 events the court may require the production of, and may admit in
4 evidence, so much of said returns or of the facts shown thereby, as are
5 pertinent to the action or proceeding and no more. Nothing in this
6 section shall be construed to prohibit the delivery to a taxpayer or his
7 or her duly authorized representative of a certified copy of any return
8 filed in connection with his or her tax; nor to prohibit the delivery of
9 such a certified copy of such return or of any information contained in
10 or relating thereto, to the United States of America or any department
11 thereof, to the state of New York or any department thereof, or to any
12 agency or department of the city of Staten Island, provided the same is
13 requested for official business; nor to prohibit the inspection for
14 official business of such returns by the corporation counsel or other
15 legal representatives of the city or by the district attorney of any
16 county within the city; nor to prohibit the publication of statistics so
17 classified as to prevent the identification of particular returns and
18 the items thereof. Returns shall be preserved for three years and ther-
19 eafter until the commissioner of finance permits them to be destroyed.

20 b. (1) Any officer or employee of the city who willfully violates the
21 provisions of subdivision a of this section shall be dismissed from
22 office and be incapable of holding any public office for a period of
23 five years thereafter.

24 (2) Cross-reference: For criminal penalties, see chapter forty of this
25 title.

26 c. This section shall be deemed a state statute for purposes of para-
27 graph (a) of subdivision two of section eighty-seven of the public offi-
28 cers law.

29 d. Notwithstanding anything in subdivision a of this section to the
30 contrary, if a taxpayer has petitioned the tax appeals tribunal for
31 administrative review as provided in section one hundred seventy of the
32 charter of the preceding municipality as it existed January first, nine-
33 teen hundred ninety-four, the commissioner of finance shall be author-
34 ized to present to the tribunal any report or return of such taxpayer,
35 or any information contained therein or relating thereto, which may be
36 material or relevant to the proceeding before the tribunal. The tax
37 appeals tribunal shall be authorized to publish a copy or a summary of
38 any decision rendered pursuant to section one hundred seventy-one of the
39 charter of the preceding municipality as it existed January first, nine-
40 teen hundred ninety-four.

41 § 11-2517 Notices and limitations of time. a. Any notice authorized or
42 required under the provisions of this chapter may be given by mailing
43 the same to the person for whom it is intended in a postpaid envelope
44 addressed to such person at the address given in the last return filed
45 by him or her pursuant to the provisions of this chapter or in any
46 application made by him or her or, if no return has been filed or appli-
47 cation made, then to such address as may be obtainable. The mailing of
48 such notice shall be presumptive evidence of the receipt of the same by
49 the person to whom addressed. Any period of time which is determined
50 according to the provisions of this chapter by the giving of notice
51 shall commence to run from the date of mailing of such notice.

52 b. The provisions of the civil practice law and rules or any other law
53 relative to limitations of time for the enforcement of a civil remedy
54 shall not apply to any proceeding or action taken by the city to levy,
55 appraise, assess, determine or enforce the collection of any tax or
56 penalty provided by this chapter. However, except in the case of a

1 wilfully false or fraudulent return with intent to evade the tax, no
2 assessment of additional tax shall be made after the expiration of more
3 than three years from the date of the filing of a return; provided,
4 however, that where no return has been filed as provided by law the tax
5 may be assessed at any time.

6 c. Where, before the expiration of the period prescribed in this
7 section for the assessment of an additional tax, a taxpayer has
8 consented in writing that such period be extended, the amount of such
9 additional tax due may be determined at any time within such extended
10 period. The period so extended may be further extended by subsequent
11 consents in writing made before the expiration of the extended period.

12 d. If any return, claim, statement, notice, application, or other
13 document required to be filed, or any payment required to be made, with-
14 in a prescribed period or on or before a prescribed date under authority
15 of any provision of this chapter is, after such period or such date,
16 delivered by United States mail to the commissioner of finance, the tax
17 appeals tribunal, bureau, office, officer or person with which or with
18 whom such document is required to be filed, or to which or to whom such
19 payment is required to be made, the date of the United States postmark
20 stamped on the envelope shall be deemed to be the date of delivery. This
21 subdivision shall apply only if the postmark date falls within the
22 prescribed period or on or before the prescribed date for the filing of
23 such document, or for making the payment, including any extension grant-
24 ed for such filing or payment, and only if such document or payment was
25 deposited in the mail, postage prepaid, properly addressed to the
26 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
27 cer or person with which or with whom the document is required to be
28 filed or to which or to whom such payment is required to be made. If any
29 document is sent by United States registered mail, such registration
30 shall be prima facie evidence that such document was delivered to the
31 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
32 cer or person to which or to whom addressed, and the date of registra-
33 tion shall be deemed the postmark date. The commissioner of finance and,
34 where relevant, the tax appeals tribunal are authorized to provide by
35 regulation the extent to which, such provisions with respect to prima
36 facie evidence of delivery and the postmark date, shall apply to certi-
37 fied mail. Except as provided in subdivision f of this section, this
38 subdivision shall apply in the case of postmarks not made by the United
39 States postal service only if and to the extent provided by regulation
40 of the commissioner of finance or, where relevant, the tax appeals
41 tribunal.

42 e. When the last day prescribed under authority of this chapter,
43 including any extension of time, for performing any act falls on a
44 Saturday, Sunday or legal holiday in the state, the performance of such
45 act shall be considered timely if it is performed on the next succeeding
46 day which is not a Saturday, Sunday or legal holiday.

47 f. (1) Any reference in subdivision d of this section to the United
48 States mail shall be treated as including a reference to any delivery
49 service designated by the secretary of the treasury of the United States
50 pursuant to section seventy-five hundred two of the internal revenue
51 code and any reference in subdivision d of this section to a United
52 States postmark shall be treated as including a reference to any date
53 recorded or marked in the manner described in section seventy-five
54 hundred two of the internal revenue code by a designated delivery
55 service. If the commissioner of finance finds that any delivery service
56 designated by such secretary is inadequate for the needs of the city,

1 the commissioner of finance may withdraw such designation for purposes
2 of this title. The commissioner of finance may also designate additional
3 delivery services meeting the criteria of section seventy-five hundred
4 two of the internal revenue code for purposes of this title, or may
5 withdraw any such designation if the commissioner of finance finds that
6 a delivery service so designated is inadequate for the needs of the
7 city. Any reference in subdivision d of this section to the United
8 States mail shall be treated as including a reference to any delivery
9 service designated by the commissioner of finance and any reference in
10 subdivision d of this section to a United States postmark shall be
11 treated as including a reference to any date recorded or marked in the
12 manner described in section seventy-five hundred two of the internal
13 revenue code by a delivery service designated by the commissioner of
14 finance, provided, however any withdrawal of designation or additional
15 designation by the commissioner of finance shall not be effective for
16 purposes of service upon the tax appeals tribunal, unless and until such
17 withdrawal of designation or additional designation is ratified by the
18 president of the tax appeals tribunal.

19 (2) Any equivalent of registered or certified mail designated by the
20 United States secretary of the treasury, or as may be designated by the
21 commissioner of finance pursuant to the same criteria used by such
22 secretary for such designations pursuant to section seventy-five hundred
23 two of the internal revenue code, shall be included within the meaning
24 of registered or certified mail as used in subdivision d of this
25 section. If the commissioner of finance finds that any equivalent of
26 registered or certified mail designated by such secretary or the commis-
27 sioner of finance is inadequate for the needs of the city, the commis-
28 sioner of finance may withdraw such designation for purposes of this
29 title, provided, however, any withdrawal of designation or additional
30 designation by the commissioner of finance shall not be effective for
31 purposes of service upon the tax appeals tribunal, unless and until such
32 withdrawal of designation or additional designation is ratified by the
33 president of the tax appeals tribunal.

34 § 11-2518 Construction and enforcement. This chapter shall be
35 construed and enforced in conformity with chapter one hundred sixty-one
36 of the laws of nineteen hundred seventy, as amended by chapter one
37 hundred sixty-two of the laws of nineteen hundred seventy, pursuant to
38 which it is enacted.

39 § 11-2519 Tourism and convention fund. Notwithstanding any provision
40 of law to the contrary, with respect to the additional tax imposed at
41 the rate of six percent on and after September first, nineteen hundred
42 ninety and before December first, nineteen hundred ninety-four pursuant
43 to subparagraph (B) of paragraph three of subdivision a of section
44 11-2502 of this chapter, four and one-sixth percent of the total reven-
45 ues resulting from the imposition of such tax, including four and one-
46 sixth percent of any interest or penalties thereon, shall be credited to
47 and deposited in a special tourism and convention fund, which shall be
48 used solely for the purpose of promoting tourism and conventions in the
49 city. Seven-eighths of the moneys in such fund shall be made available
50 to the New York Convention and Visitor's Bureau, Inc. pursuant to an
51 annual contract with the city which may specify, among other things, the
52 services which shall be provided by such bureau with such moneys and the
53 content and number of reports which will have to be provided by such
54 bureau to the city concerning the expenditure of such moneys, and
55 provided that the annual budget and business plan of such bureau is
56 approved by the mayor of the city or his or her designee. The remaining

1 one-eighth of the fund shall be spent for promoting tourism and
2 conventions which may include, at the mayor's discretion, moneys spent
3 in connection with additional contracts made with the New York Conven-
4 tion and Visitor's Bureau, Inc. For purposes of this section, the term
5 "promoting tourism and conventions" shall mean developing, placing and
6 purchasing advertising promoting the city, and engaging in such other
7 efforts as are designed to attract tourists and conventions to the city.

8
9

CHAPTER 26
TAX ON MORTGAGES

10 § 11-2601 Imposition of tax. a. A tax of fifty cents for each one
11 hundred dollars and each remaining major fraction thereof of principal
12 debt or obligation which is, or under any contingency may be secured at
13 the date of execution thereof or at any time thereafter by a mortgage on
14 real property situated within the city and recorded on or after August
15 first, nineteen hundred seventy-one and prior to February first, nine-
16 teen hundred eighty-two, is hereby imposed on each such mortgage and
17 shall be collected and paid as provided in this chapter. If the princi-
18 pal debt or obligation which is or by any contingency may be secured by
19 such mortgage is less than one hundred dollars, a tax of fifty cents is
20 hereby imposed on such mortgage, and shall be collected and paid as
21 provided in this chapter.

22 b. With respect to: (1) one, two or three-family houses, individual
23 cooperative apartments and individual residential condominium units, and
24 (2) real property securing a principal debt or obligation of less than
25 five hundred thousand dollars, a tax of fifty cents, and with respect to
26 all other real property a tax of one dollar and twelve and one-half
27 cents, for each one hundred dollars and each remaining major fraction
28 thereof of principal debt or obligation which is, or under any contin-
29 gency may be secured at the date of execution thereof or at any time
30 thereafter by a mortgage on such real property situated within the city
31 and recorded on or after February first, nineteen hundred eighty-two and
32 before July first, nineteen hundred eighty-two, is hereby imposed on
33 each such mortgage and shall be collected and paid as provided in this
34 chapter. If the principal debt or obligation which is or by any contin-
35 gency may be secured by such mortgage is less than one hundred dollars,
36 a tax of one dollar is hereby imposed on such mortgage, and shall be
37 collected and paid as provided in this chapter.

38 c. With respect to: (1) real property securing a principal debt or
39 obligation of less than five hundred thousand dollars, a tax of fifty
40 cents, (2) with respect to one, two or three-family houses, individual
41 cooperative apartments and individual residential condominium units
42 securing a principal debt or obligation of five hundred thousand dollars
43 or more, a tax of sixty-two and one-half cents, and (3) with respect to
44 all other real property, a tax of one dollar and twenty-five cents, for
45 each one hundred dollars and each remaining major fraction thereof of
46 principal debt or obligation which is, or under any contingency may be
47 secured at the date of execution thereof or at any time thereafter by a
48 mortgage on such real property situated within the city and recorded on
49 or after July first, nineteen hundred eighty-two and before August
50 first, nineteen hundred ninety, is hereby imposed on each such mortgage
51 and shall be collected and paid as provided in this chapter. If the
52 principal debt or obligation which is or by any contingency may be
53 secured by such mortgage is less than one hundred dollars, a tax of one

1 dollar is hereby imposed on such mortgage and shall be collected and
2 paid as provided in this chapter.

3 d. With respect to: (1) real property securing a principal debt or
4 obligation of less than five hundred thousand dollars, a tax of one
5 dollar, (2) with respect to one, two or three-family houses and individ-
6 ual residential condominium units securing a principal debt or obli-
7 gation of five hundred thousand dollars or more, a tax of one dollar and
8 twelve and one-half cents, and (3) with respect to all other real prop-
9 erty, a tax of one dollar and seventy-five cents, for each one hundred
10 dollars and each remaining major fraction thereof of principal debt or
11 obligation which is, or under any contingency may be secured at the date
12 of execution thereof, or at anytime thereafter by a mortgage on such
13 real property situated within the city and recorded on or after August
14 first, nineteen hundred ninety, is hereby imposed on each such mortgage
15 and shall be collected and paid as provided in this chapter. If the
16 principal debt or obligation which is or by any contingency may be
17 secured by such mortgage is less than one hundred dollars, a tax of one
18 dollar is hereby imposed on such mortgage and shall be collected and
19 paid as provided in this chapter.

20 e. (1) For the purpose of determining whether a mortgage is subject to
21 the tax imposed by subdivision b or c of this section at a rate in
22 excess of fifty cents, or by subdivision d of this section at a rate in
23 excess of one dollar, for each one hundred dollars and each remaining
24 major fraction thereof of principal debt or obligation, the principal
25 debt or obligation which is or under any contingency may be secured at
26 the date of execution thereof, or at any time thereafter, by such mort-
27 gage shall be aggregated with the principal debt or obligation which is
28 or under any contingency may be secured at the date of execution there-
29 of, or at any time thereafter, by any other mortgage, where such mort-
30 gages form part of the same or related transactions and have the same or
31 related mortgagors. If the commissioner of taxation and finance finds
32 that a mortgage transaction or mortgage transactions have been formu-
33 lated for the purpose of avoiding or evading a rate of tax imposed under
34 this section in excess of the lowest such rate, rather than solely for
35 an independent business or financial purpose, such commissioner shall
36 treat all of the mortgages forming part of such transaction or trans-
37 actions as a single mortgage for the purpose of determining the applica-
38 ble rate of tax. For the purposes of this subdivision, all mortgages
39 having the same or related mortgagors offered for recording within a
40 period of twelve consecutive months shall be presumed to form part of a
41 related transaction, unless clear and convincing evidence is offered to
42 the contrary. The commissioner of taxation and finance may require such
43 affidavits and forms, and may prescribe such rules and regulations, as
44 he or she determines to be necessary to enforce the provisions of this
45 subdivision.

46 (2) The term "related", when used in this subdivision with reference
47 to mortgagors, shall include, but shall not be limited to, the following
48 relationships:

49 (i) members of a family, including spouses, ancestors, lineal descend-
50 ants, and brothers and sisters, whether by the whole or half blood;

51 (ii) a shareholder and a corporation more than fifty percent of the
52 value of the outstanding stock of which is owned or controlled directly
53 or indirectly by such shareholder;

54 (iii) a partner and a partnership more than fifty percent of the capi-
55 tal or profits interest in which is owned or controlled directly or
56 indirectly by such partner;

1 (iv) a beneficiary and a trust more than fifty percent of the benefi-
2 cial interest in which is owned or controlled directly or indirectly by
3 such beneficiary;

4 (v) two or more corporations, partnerships, associations, or trusts,
5 or any combination thereof, which are owned or controlled, either
6 directly or indirectly, by the same person, corporation or other entity,
7 or interests; and

8 (vi) a grantor of a trust and such trust.

9 f. Notwithstanding any provision to the contrary in paragraph (a) of
10 subdivision one of section two hundred fifty-five of the tax law, the
11 taxes imposed by subdivision c or d of this section shall also apply to
12 principal indebtedness or obligation secured by or which under any
13 contingency may be secured by a supplemental instrument or additional
14 mortgage, whether or not there is any new or further indebtedness or
15 obligation other than the principal indebtedness or obligation secured
16 by a recorded primary mortgage, where (1) the supplemental instrument or
17 additional mortgage imposes the lien of a recorded mortgage upon real
18 property situated within the city not previously subject to the mortgage
19 or where an additional mortgage upon such additional property is
20 recorded as additional or substitute security for indebtedness or obli-
21 gation already secured by a recorded mortgage and (2) the recorded
22 primary mortgage was on real property outside the city and recorded
23 without payment of the city tax.

24 § 11-2602 Payment and payment over of taxes. The taxes imposed by
25 this chapter shall be payable on the recording of each mortgage of real
26 property subject to taxes pursuant to such chapter. Such taxes shall be
27 paid to the recording officer of the county in which the real property
28 or any part thereof is situated, except where real property is situated
29 within and without the city, the recording officer of the county in
30 which the mortgage is first recorded shall collect the tax imposed by
31 this chapter, as required by subdivision three of section two hundred
32 fifty-three-a of the tax law. It shall be the duty of such recording
33 officer to indorse upon each mortgage a receipt for the amount of the
34 tax so paid. Any mortgage so endorsed may thereupon or thereafter be
35 recorded by any recording officer and the receipt for such tax indorsed
36 upon each mortgage shall be recorded therewith. The record of such
37 receipt shall be conclusive proof that the amount of tax stated therein
38 has been paid upon such mortgage. Upon the first day of each month the
39 city register and the recording officer of Richmond county shall pay
40 over to the commissioner of finance of the city for credit to the gener-
41 al fund of such city, the balance of the moneys received during the
42 preceding month upon account of taxes paid to him or her as prescribed
43 in this section, after deducting the necessary expenses of his or her
44 office as provided in section two hundred sixty-two of the tax law,
45 except taxes paid upon mortgages which are first to be apportioned by
46 the commissioner of taxation and finance, which taxes and money shall be
47 paid over by him or her as provided by the determination of the said
48 commissioner of taxation and finance, provided, however, in each
49 instance where the tax imposed pursuant to section 11-2601 of this chap-
50 ter is one dollar and twenty-five cents for each one hundred dollars and
51 each remaining major fraction thereof of such principal debt or obli-
52 gation, fifty percent of the total amount of such tax, including fifty
53 percent of any interest or penalties thereon, shall be set aside in a
54 special account by the commissioner of finance, and in each instance
55 where the tax imposed pursuant to that section is one dollar and seven-
56 ty-five cents for each one hundred dollars and each remaining major

1 fraction thereof of such principal debt or obligation, thirty-five and
2 seven-tenths percent of the total amount of such tax, including thirty-
3 five and seven-tenths percent of any interest or penalties thereon,
4 shall also be set aside in such special account. Moneys in such account
5 shall be used for payment by such commissioner to the state comptroller
6 for deposit in the urban mass transit operating assistance account of
7 the mass transportation operating assistance fund of any amount of
8 insufficiency certified by the state comptroller pursuant to the
9 provisions of subdivision six of section eighty-eight-a of the state
10 finance law, and on the fifteenth day of each month, such commissioner
11 shall transmit all funds in such account at the end of the preceding
12 month, except the amount required for the payment of any amount of
13 insufficiency certified by the state comptroller and such amount as he
14 or she deems necessary for refunds and such other amounts necessary to
15 finance the city transportation disabled committee and the city para-
16 transit system as established by section fifteen-b of the transportation
17 law, provided, however, that such amounts shall not exceed six percent
18 of the total funds in the account but in no event be less than two
19 hundred twenty-five thousand dollars beginning April first, nineteen
20 hundred eighty-six, and further that beginning November fifteenth, nine-
21 teen hundred eighty-four and during the entire period prior to operation
22 of such system, the total of such amounts shall not exceed three hundred
23 seventy-five thousand dollars for the administrative expenses of such
24 committee and fifty thousand dollars for the expenses of the agency
25 designated pursuant to paragraph b of subdivision five of such section,
26 and other amounts necessary to finance the operating needs of the
27 private bus companies franchised by the city of Staten Island and eligi-
28 ble to receive state operating assistance under section eighteen-b of
29 the transportation law, provided, however, that such amounts shall not
30 exceed four percent of the total funds in the account, to the New York
31 city transit authority for mass transit within the city.

32 § 11-2603 Manner of administration and collection. The taxes imposed
33 under this chapter shall be administered and collected in the same
34 manner as the taxes imposed under subdivision one of section two hundred
35 fifty-three and subdivision one of section two hundred fifty-five of the
36 tax law. All the provisions of article eleven of the tax law relating
37 to or applicable to the administration and collection of the taxes
38 imposed by subdivision one of section two hundred fifty-three and subdivi-
39 sion one of section two hundred fifty-five of the tax law shall apply
40 to the taxes imposed under this chapter with the same force and effect
41 as if those provisions had been set forth in full in this chapter except
42 to the extent that any such provision is either inconsistent with a
43 provision of this chapter or not relevant to the tax imposed by this
44 chapter. For purposes of this chapter any reference in article eleven
45 of the tax law to the tax or taxes imposed by such article shall be
46 deemed to refer to a tax imposed by this chapter, and any reference to
47 the phrase "within this state" shall be read as "within this city"
48 unless a different meaning is clearly required. Whenever real property
49 covered by the mortgage is partly within and partly without the city of
50 Staten Island, the portion of the mortgage taxable under this chapter
51 shall be determined in the manner prescribed in the first paragraph of
52 section two hundred sixty of the tax law where the property without the
53 city is located within the state and, in the manner prescribed in the
54 second paragraph of such section of the tax law, where the property
55 without the city is located without the state.

1 § 11-2604 Tax additional. The tax imposed by this chapter shall be
2 in addition to any taxes imposed by section two hundred fifty-three of
3 the tax law.

4 CHAPTER 27
5 ANNUAL VAULT CHARGE

6 § 11-2701 Definitions. When used in this chapter, the following terms
7 shall mean or include:

8 1. "Person." An individual, partnership, society, association, joint-
9 stock company, corporation, estate, receiver, lessee, trustee, assignee,
10 referee, or any other person acting in a fiduciary or representative
11 capacity, whether appointed by a court or otherwise, and any combination
12 of individuals.

13 2. "Vault." Any subsurface opening, structure or erection, whether or
14 not wholly or partly covered over, to the extent that it extends from
15 the building line into any street of the city, for the erection of which
16 a license fee is required pursuant to the charter of the city or this
17 code.

18 3. "Street." Every public street, avenue, road, alley, lane, highway,
19 boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk
20 and viaduct, and every other class of public highway, road, square and
21 place within or belonging to the city.

22 4. "Using, occupying or maintaining." Any right or authority to
23 install, store or maintain property of any kind in a vault, or otherwise
24 to use, occupy or maintain such vault for any purpose whatsoever. Such
25 right or authority shall be deemed to exist wherever a vault has not
26 been filled in or closed by the licensee or abutting property owner and
27 the street restored to its original condition pursuant to the require-
28 ments of the charter of the city or this code.

29 5. "City surveyor." Any person appointed a surveyor of the city of
30 Staten Island pursuant to the code of the city.

31 6. "Owner of the premises immediately adjoining the vault." Any person
32 who is the owner of record of real property located in whole or in part
33 within the city, from which a vault has been extended.

34 7. "Depth." The vertical distance from the ceiling, roof or top of a
35 vault to the floor, bottom or lowest point thereof.

36 8. "City." The city of Staten Island.

37 9. "Comptroller." The comptroller of the city.

38 10. "Commissioner of finance." The commissioner of finance of the
39 city.

40 11. "Return." Any return required to be filed as under this chapter
41 provided.

42 12. "Tax appeals tribunal." The tax appeals tribunal established by
43 section one hundred sixty-eight of the charter of the preceding munici-
44 pality as it existed January first, nineteen hundred ninety-four.

45 § 11-2702 Imposition of charge. (a) In addition to any and all
46 other license fees, charges and taxes, there is hereby imposed and there
47 shall be paid an annual vault charge, beginning as of July first, nine-
48 teen hundred sixty-two, for the privilege of occupying, using or main-
49 taining a vault in the streets of the city, to be paid by the owner of
50 the premises immediately adjoining the vault.

51 (A) For periods prior to July first, nineteen hundred seventy-one such
52 annual vault charges shall be at the following rates:

53 1. On any vault occupying up to two hundred and fifty square feet in
54 plane or surface area but no more than twelve feet in depth, thirty-five

1 cents per square foot but not less than five dollars for the total occu-
2 pancy;

3 2. On any vault occupying more than two hundred fifty square feet in
4 plane or surface area but not more than twelve feet in depth, thirty-
5 five cents per square foot for the first two hundred fifty square feet
6 of an area and sixty cents per square foot for that portion of the area
7 in excess of two hundred fifty square feet;

8 3. On any vault more than twelve feet in depth, an additional charge
9 for each additional ten feet in depth or fraction thereof calculated by
10 adding the plane or surface area for each such additional depth to the
11 area calculated pursuant to subparagraphs one and two and by applying to
12 such total area the same rates as provided in subparagraphs one and two.
13 The additional area for any additional depth of ten feet or fraction
14 thereof shall however, be reduced by ten percent for each foot of depth
15 less than ten feet.

16 (B) For periods beginning on or after July first, nineteen hundred
17 seventy-one and ending on or before May thirty-first, nineteen hundred
18 eighty, such annual vault charges shall be at the following rates:

19 1. On any vault occupying no more than twelve feet in depth, one
20 dollar per square foot of plane or surface area but not less than five
21 dollars for the total occupancy;

22 2. On any vault more than twelve feet in depth, an additional charge
23 for each additional ten feet in depth, or fraction thereof calculated by
24 adding the plane or surface area for each such additional depth to the
25 area calculated pursuant to subparagraph one of this paragraph and by
26 applying to such total area the same rate as provided in subparagraph
27 one of this paragraph. The additional area for any additional depth of
28 ten feet or fraction thereof shall however, be reduced by ten percent
29 for each foot of depth less than ten feet.

30 (C) For periods beginning on or after June first, nineteen hundred
31 eighty such annual vault charge shall be at the following rates:

32 1. On any vault occupying no more than twelve feet in depth, two
33 dollars per square foot of plane or surface area;

34 2. On any vault more than twelve feet in depth, an additional charge
35 for each additional ten feet in depth, or fraction thereof calculated by
36 adding the plane or surface area for each such additional depth to the
37 area calculated pursuant to subparagraph one of this paragraph and by
38 applying to such total area the same rate as provided in subparagraph
39 one of this paragraph. The additional area for any additional depth of
40 ten feet or fraction thereof shall however, be reduced by ten percent
41 for each foot of depth less than ten feet.

42 (D) Notwithstanding any provision of law to the contrary, no annual
43 vault charge or additional charge shall be imposed pursuant to this
44 chapter on or after June first, nineteen hundred ninety-eight.

45 (b) Where the owner of the premises immediately adjoining the vault
46 is exempt from or otherwise not liable for the annual vault charge, the
47 tenant, lessee or any other person using, occupying or maintaining such
48 vault shall be liable therefor.

49 (c) The annual vault charge imposed by this section shall be due from,
50 and shall be paid by, the person who is the owner of the premises imme-
51 diately adjoining the vault on the first day of July of the year for
52 which such charge is imposed except that, on and after June first, nine-
53 teen hundred seventy-two, such charge shall be due from, and shall be
54 paid by the person who is the owner of the premises immediately adjoining
55 the vault on the first day of June of the year for which such charge
56 is imposed. Where the annual vault charge is imposed pursuant to subdi-

1 vision (b) of this section, such annual vault charge shall be due from
2 and paid by, the tenant, lessee or any other person using, occupying or
3 maintaining the vault on the first day of July of the year for which
4 such charge is imposed, except that for years beginning on or after June
5 first, nineteen hundred seventy-two, such charge shall be due from, and
6 paid by, the tenant, lessee or any other person using, occupying or
7 maintaining the vault on the first day of June of the year for which
8 such charge is imposed.

9 (d) In the event that the annual vault charge as imposed by this chap-
10 ter shall be held invalid, then such annual vault charge shall be deemed
11 a tax on the same basis and at the same rates as provided in this chap-
12 ter and all other provisions of this chapter shall be equally applica-
13 ble.

14 (e) Where, prior to the first day of August in any year in which the
15 annual vault charge imposed under this chapter shall be due and payable,
16 if a vault or part thereof is made unavailable for use or occupancy, the
17 annual vault charge paid for such year, pursuant to the provisions of
18 this chapter, shall be refunded in full upon application to and furnish-
19 ing of such proof as the commissioner of finance may require. Where
20 such closing of a vault occurs prior to the last day of December in any
21 such year, fifty percent of the annual vault charge due and actually
22 paid for such year shall be refunded to the payor upon application to
23 and furnishing of such proof as the commissioner of finance may require.
24 Where such closing is limited to a part of a vault, such a refund shall
25 be granted only to the extent that the closing reduces the area of the
26 vault and thereby the amount of the charge for the vault.

27 § 11-2703 Exemptions. The charges imposed by this chapter shall not
28 apply to the following:

29 1. The state of New York, or any public corporation, including a
30 public corporation created pursuant to agreement or compact with another
31 state or the Dominion of Canada, improvement district or other political
32 subdivision of the state;

33 2. The United States of America, insofar as it is immune from taxa-
34 tion;

35 3. The United Nations or other world-wide international organizations
36 of which the United States of America is a member;

37 4. Any corporation, or association, or trust, or community chest, fund
38 or foundation, organized and operated exclusively for religious, chari-
39 table, or educational purposes, or for the prevention of cruelty to
40 children or animals, and no part of the net earnings of which inures to
41 the benefit of any private shareholder or individual and no substantial
42 part of the activities of which is carrying on propaganda, or otherwise
43 attempting to influence legislation; provided, however, that nothing in
44 this subdivision shall include an organization operated for the primary
45 purpose of carrying on a trade or business for profit, whether or not
46 all of its profits are payable to one or more organizations described in
47 this subdivision.

48 5. Any vault constituting property defined as a special franchise in
49 section one hundred two of the real property tax law or assessed as such
50 pursuant to article six of such law.

51 6. Any vault to the extent that it is used, occupied or maintained
52 pursuant to a revocable consent granted pursuant to section three
53 hundred seventy-four of the charter of the preceding municipality as it
54 existed January first, nineteen hundred ninety-four.

55 7. Any vault immediately adjoining a building or structure designed
56 for and used exclusively as a single-family or a two-family dwelling

1 house or any other real property which is classified as class one real
2 property pursuant to section eighteen hundred two of the real property
3 tax law.

4 8. Any street occupancy usable solely and exclusively for the melting
5 of snow and ice, or for delivery into the immediately adjoining prem-
6 ises, of coal, oil or other fuel for the heating thereof.

7 9. Any vault occupying no more than thirty-six square feet in plane or
8 surface area, irrespective of the depth of such vault.

9 § 11-2704 Filing of returns. a. Every person subject to the annual
10 vault charge under this chapter shall, on or before the first day of
11 August, nineteen hundred sixty-two, and on or before the fifteenth day
12 of July of every year thereafter, file with the commissioner of finance
13 a return showing the dimensions of the vault as to length, width and
14 depth, except that the return required to be filed on or before July
15 fifteenth, nineteen hundred seventy-two shall be filed on or before June
16 fifteenth, nineteen hundred seventy-two and those due in later years
17 shall be required to be filed on or before June fifteenth of such years.
18 The commissioner of finance, if he or she deems it necessary to insure
19 adequate information with regard to the proper charge to be imposed, may
20 require information returns from other persons, including the owners of
21 real property regardless of whether a vault has been extended therefrom,
22 the users or lessees of the vault or lessees or tenants of the property
23 adjoining the vault.

24 b. The forms of returns shall be prescribed by the commissioner of
25 finance and shall contain such information as he or she may deem neces-
26 sary for the proper administration of this chapter; and the commissioner
27 of finance or his or her duly authorized agents or employees shall be
28 empowered to require supplemental returns. If a return required by this
29 chapter is not filed or if the return when filed is incorrect or insuf-
30 ficient on its face, the commissioner of finance shall take the neces-
31 sary steps to enforce the filing of such a return or of a corrected
32 return. Upon failure to comply with a notice to furnish a return or a
33 sufficient return, the commissioner of finance may require the filing of
34 a certificate signed by a city surveyor specifying the dimensions of the
35 vault.

36 c. For each annual vault charge year beginning on or after June first,
37 nineteen hundred eighty-nine, the commissioner of finance shall, at
38 least thirty days prior to the commencement of such year, mail to each
39 person who has filed an annual vault charge return for the immediately
40 preceding year an annual vault charge return form on which shall be
41 shown the amount of the charge for such immediately preceding year. Such
42 return form shall be accompanied by instructions which explain in clear
43 and simple terms how to determine the dimensions and extent of street
44 occupancy of a vault, how to calculate the amount of the charge, and
45 such other matters as the commissioner considers necessary or helpful to
46 an understanding of the requirements of this chapter, provided, however,
47 neither the failure of the commissioner to mail such return form and
48 instructions nor the failure of any person to receive the same shall
49 relieve any person of the obligation to file any return required under
50 this section or of liability for the charge, interest or penalties
51 imposed by this chapter.

52 d. If no form or other notice has previously been sent to a person
53 subject to the annual vault charge with respect to the amount of vault
54 charge owed for any year, the commissioner of finance shall notify such
55 person of the amount owed as soon as practicable after discovering that
56 such amount is owed.

1 § 11-2705 Payment of vault charges. a. At the time of filing a return
2 as required by this chapter the person subject to the annual vault
3 charge shall pay to the commissioner of finance the charge imposed by
4 this chapter. Such charge shall be due and payable on the last day on
5 which such return is required to be filed, without regard to whether a
6 return is filed or whether the return which is filed correctly shows the
7 amount due.

8 b. The charge otherwise required to be paid with the return due on or
9 before June fifteenth, nineteen hundred eighty shall be paid in two
10 equal installments as follows: one-half of the charge shall be paid with
11 the return on or before June fifteenth, nineteen hundred eighty, and
12 one-half of the charge shall be paid on or before September fifteenth,
13 nineteen hundred eighty.

14 § 11-2706 Presumption and burden of proof. For the purpose of the
15 proper administration of this chapter and to prevent evasion of the
16 annual vault charge hereby imposed, it shall be presumed, except where
17 the depth of a vault exceeds twelve feet, that the size of the vault as
18 indicated upon the license therefor originally issued by the former
19 borough president of Staten Island up to and including December thirty-
20 first, nineteen hundred sixty-two, and the commissioner of transporta-
21 tion thereafter is a proper measure of the charge until the contrary is
22 established, and the burden of proving that the size of the vault is not
23 accurately stated upon the license shall be upon the person so claiming.
24 In cases where no license of record has been issued for a vault or where
25 the depth of a vault exceeds twelve feet, the burden of proving the
26 actual size of the vault shall be upon the person liable for the vault
27 charge.

28 § 11-2707 Determination of vault charge. If a return required by this
29 chapter is not filed or if a return when filed is incorrect or insuffi-
30 cient, the amount of the vault charge due shall be determined by the
31 commissioner of finance from such information as may be obtainable and,
32 if necessary, the charge may be estimated on the basis of external
33 indices, including but not limited to the records of the department of
34 transportation, the reports of tax assessors, the reports of inspectors
35 and investigators in the offices of the commissioner of finance and
36 commissioner of transportation, or other information or factors. Notice
37 of such determination shall be given to the person liable for the
38 payment thereof. Such determination shall finally and irrevocably fix
39 the vault charge unless the person against whom it is assessed shall,
40 within ninety days after the giving of notice of such determination, or,
41 if the commissioner of finance has established a conciliation procedure
42 pursuant to section 11-124 of the code of the preceding municipality and
43 such person has requested a conciliation conference in accordance there-
44 with, within ninety days from the mailing of a conciliation decision or
45 the date of the commissioner's confirmation of the discontinuance of the
46 conciliation proceeding, both (1) serves a petition upon the commission-
47 er of finance and (2) files a petition with the tax appeals tribunal, or
48 unless the commissioner of finance of his or her own motion shall rede-
49 termine the same. Upon such hearing the tax appeals tribunal may
50 require the filing of a certificate signed by a city surveyor specifying
51 the dimensions of the vault. After such hearing the tax appeals tribu-
52 nal shall give notice of its decision to the person against whom the
53 vault charge is assessed. A decision of the tax appeals tribunal
54 sitting en banc shall be reviewable for error, illegality or unconstitu-
55 tionality or any other reason whatsoever by a proceeding under article
56 seventy-eight of the civil practice law and rules if application there-

1 for is made to the supreme court by the person against whom the vault
2 charge was assessed within four months after the giving of the notice of
3 such tax appeals tribunal decision. A proceeding under article seventy-
4 eight of the civil practice law and rules shall not be instituted by a
5 person against whom the vault charge is assessed unless (a) the amount
6 of any vault charge sought to be reviewed, with penalties and interest
7 thereon, if any, shall be first deposited with the commissioner of
8 finance and there shall be filed with the commissioner of finance an
9 undertaking in such amount and with such sureties as a justice of the
10 supreme court shall approve, to the effect that if such proceeding be
11 dismissed or the vault charge confirmed the person against whom the
12 vault charge is assessed will pay all costs and charges which may accrue
13 in the prosecution of the proceeding, or (b) at the option of such
14 person, such undertaking filed with the commissioner of finance may be
15 in a sum sufficient to cover the vault charge, penalties and interest
16 thereon stated in such decision plus the costs and charges which may
17 accrue against him or her in the prosecution of the proceeding, in which
18 event such person shall not be required to deposit such vault charge,
19 penalties and interest as a condition precedent to the application.

20 § 11-2708 Refunds. a. In the manner provided in this section, the
21 commissioner of finance shall refund or credit, without interest, any
22 vault charge, penalty or interest erroneously, illegally or unconstitu-
23 tionally collected or paid if application to the commissioner of finance
24 for such refund shall be made within one year from the payment thereof.
25 Whenever a refund is made or denied by the commissioner of finance, he
26 or she shall state his or her reason therefor and give notice thereof to
27 the applicant in writing. Such application may be made by the owner of
28 the premises, or other person, who has actually paid the vault charge.
29 The commissioner of finance may, in lieu of any refund required to be
30 made, allow credit therefor on payments due from the applicant.

31 b. Any determination of the commissioner of finance denying a refund
32 or credit pursuant to subdivision a of this section shall be final and
33 irrevocable unless the applicant for such refund or credit, within nine-
34 ty days from the mailing of notice of such determination, or, if the
35 commissioner of finance has established a conciliation procedure pursu-
36 ant to section 11-124 of the code of the preceding municipality and the
37 applicant has requested a conciliation conference in accordance there-
38 with, within ninety days from the mailing of a conciliation decision or
39 the date of the commissioner's confirmation of the discontinuance of the
40 conciliation proceeding, both (1) serves a petition upon the commission-
41 er of finance and (2) files a petition with the tax appeals tribunal for
42 a hearing. Such petition for a refund or credit, made as provided in
43 this section, shall be deemed an application for a revision of any vault
44 charge, penalty or interest complained of. Such hearing and any appeal
45 to the tax appeals tribunal sitting en banc from the decision rendered
46 in such hearing shall be conducted in the manner and subject to the
47 requirements prescribed by the tax appeals tribunal pursuant to sections
48 one hundred sixty-eight through one hundred seventy-two of the charter
49 of the preceding municipality as it existed January first, nineteen
50 hundred ninety-four. After such hearing, the tax appeals tribunal shall
51 give notice of its decision to the applicant and to the commissioner of
52 finance. The applicant shall be entitled to review such decision of the
53 tax appeals tribunal sitting en banc by a proceeding pursuant to article
54 seventy-eight of the civil practice law and rules, provided such
55 proceeding is instituted within four months after the giving of the
56 notice of such decision, and provided, in the case of an application by

1 a person against whom the vault charge is assessed, that a final deter-
2 mination of the vault charge due was not previously made. Such a
3 proceeding shall not be instituted by a person against whom the vault
4 charge is assessed unless an undertaking is filed with the commissioner
5 of finance in such amount and with such sureties as a justice of the
6 supreme court shall approve to the effect that if such proceeding be
7 dismissed or the vault charge confirmed, such person will pay all costs
8 and charges which may accrue in the prosecution of such proceeding.

9 c. A person shall not be entitled to a revision, refund or credit
10 under this section of a vault charge, interest or penalty which had been
11 determined to be due pursuant to the provisions of section 11-2707 of
12 this chapter where he or she has had a hearing or an opportunity for a
13 hearing, as provided in said section, or has failed to avail himself or
14 herself of the remedies therein provided. No refund or credit shall be
15 made of annual vault charge, interest or penalty paid after a determi-
16 nation by the commissioner of finance made pursuant to section 11-2707
17 of this chapter unless it be found that such determination was errone-
18 ous, illegal or unconstitutional or otherwise improper, by the tax
19 appeals tribunal after a hearing or on the commissioner's own motion,
20 or, if such tax appeals tribunal affirms in whole or in part the deter-
21 mination of the commissioner of finance, in a proceeding under article
22 seventy-eight of the civil practice law and rules, pursuant to the
23 provisions of said section, in which event refund or credit without
24 interest shall be made of the vault charge, interest or penalty found to
25 have been overpaid.

26 § 11-2709 Reserves. In cases where the person or persons liable for
27 the vault charge imposed by this chapter has applied for a refund and
28 has instituted a proceeding under article seventy-eight of the civil
29 practice law and rules to review a determination adverse to him or her
30 on his or her application for refund, the comptroller shall set up
31 appropriate reserves to meet any decision adverse to the city.

32 § 11-2710 Remedies exclusive. The remedies provided by sections
33 11-2707 and 11-2708 of this chapter shall be the exclusive remedies
34 available to any person for the review of the liability imposed under
35 this chapter, and no determination or proposed determination of an annu-
36 al vault charge or determination on any application for refund by the
37 commissioner of finance, nor any decision by the tax appeals tribunal or
38 any of its administrative law judges, shall be enjoined or reviewed by
39 an action for declaratory judgment, an action for money had and received
40 or by any action or proceeding other than, in the case of a decision by
41 the tax appeals tribunal sitting en banc, a proceeding in the nature of
42 a certiorari proceeding under article seventy-eight of the civil prac-
43 tice law and rules; provided, however, that a person liable for the
44 annual vault charge may proceed by declaratory judgment if he or she
45 institutes suit within thirty days after a deficiency assessment is made
46 and pays the amount of the deficiency assessment to the commissioner of
47 finance prior to the institution of such suit and posts a bond for costs
48 as provided in section 11-2707 of this chapter.

49 § 11-2711 Proceedings to recover annual vault charge. a. Whenever any
50 person shall fail to pay any vault charge, penalty or interest imposed
51 by this chapter as provided in this chapter, the corporation counsel
52 shall, upon the request of the commissioner of finance bring, or cause
53 to be brought, an action to enforce the payment of the same on behalf of
54 the city of Staten Island in any court of the state of New York or of
55 any other state or of the United States.

1 b. As an additional remedy or as an alternate remedy, the commissioner
2 of finance may issue a warrant, directed to the city sheriff, commanding
3 him or her to levy upon and sell the real and personal property of the
4 person liable for vault charges which may be found within the city for
5 the payment of the amount thereof, with any penalties and interest, and
6 the cost of executing the warrant, and to return such warrant to the
7 commissioner of finance and to pay to him or her the money collected by
8 virtue thereof within sixty days after the receipt of such warrant. The
9 city sheriff shall within five days after the receipt of the warrant
10 file with the county clerk a copy thereof, and thereupon such clerk
11 shall enter in the judgment docket the name of the person mentioned in
12 the warrant and the amount of the vault charge, penalty and interest for
13 which the warrant is issued and the date when such copy is filed. There-
14 upon the amount of such warrant so docketed shall become a lien upon
15 the title to and interest in real and personal property of the person
16 against whom the warrant is issued. The city sheriff shall then proceed
17 upon the warrant in the same manner, and with like effect, as that
18 provided by law in respect to executions issued against property upon
19 judgments of a court of record and for services in executing the warrant
20 he or she shall be entitled to the same fees, which he or she may
21 collect in the same manner. In the discretion of the commissioner of
22 finance a warrant of like terms, force and effect may be issued and
23 directed to an officer or employee of the department of finance, and in
24 the execution thereof such officer or employee shall have all the powers
25 conferred by law upon sheriffs, but shall be entitled to no fee or
26 compensation in excess of the actual expenses paid in the performance of
27 such duty. If a warrant is returned not satisfied in full, the commis-
28 sioner of finance may from time to time issue new warrants and shall
29 also have the same remedies to enforce the amount due thereunder as if
30 the city had recovered judgment therefor and execution thereon had been
31 returned unsatisfied.

32 c. In addition to any other lien provided for in this section, the
33 annual vault charge imposed by this chapter shall become a lien, binding
34 upon the premises immediately adjoining such vault, on the date such
35 charge is required to be paid until the same is paid in full.

36 d. The commissioner of finance, if he or she finds that the interests
37 of the city will not thereby be jeopardized, and upon such conditions as
38 the commissioner of finance may require, may release any property from
39 the lien of any warrant or vacate such warrant for unpaid vault charges,
40 additions to vault charges, penalties and interest filed pursuant to
41 subdivision b of this section, and such release or vacating of the
42 warrant may be recorded in the office of any recording officer in which
43 such warrant has been filed. The clerk shall thereupon cancel and
44 discharge as of the original date of docketing the vacated warrant.

45 § 11-2712 General powers of the commissioner of finance. In addition
46 to all other powers granted to the commissioner of finance in this chap-
47 ter, he or she is hereby authorized and empowered:

48 1. To make, adopt and amend rules and regulations appropriate to the
49 carrying out of this chapter and the purpose thereof;

50 2. To extend, for cause shown, the time for filing any return for a
51 period not exceeding sixty days; and to compromise disputed claims in
52 connection with the vault charges imposed under this chapter;

53 3. To delegate his or her functions under this chapter to a deputy
54 commissioner of finance or any employee or employees of the department
55 of finance;

1 4. To prescribe methods for determining the size, dimensions, depth
2 and extent of street occupancy of a vault; to set forth the manner of
3 computing the vault charges under this chapter; to prescribe standards
4 or methods, by regulation or otherwise, for determining whether a vault
5 has been made unavailable for use or occupancy; and the commissioner of
6 finance or his or her designated employees or agents shall have power to
7 inspect premises for the purpose of determining the extent, if any, of
8 liability imposed by this chapter.

9 5. To require any owner of premises or licensee or other person using,
10 occupying or maintaining a vault to obtain from the commissioner of
11 finance a certificate stating the dimensions and depth of the vault and
12 that the vault charge thereon has been paid and to exhibit the same to
13 duly authorized employees at the premises or real property adjoining the
14 said vault, and to keep such records, and for such length of time, as
15 may be required for the proper administration of this chapter, and to
16 furnish such records to the commissioner of finance upon request;

17 6. To assess, reassess, determine, revise and readjust the vault
18 charges imposed under this chapter;

19 7. Where he or she has exercised his or her authorized power to
20 require the filing of a certificate signed by a city surveyor specifying
21 the dimensions of a vault and the owner of the premises has failed to
22 comply, he or she may obtain such certificate and, in such situation,
23 the necessary expense of obtaining such certificate shall constitute a
24 lien against such premises until paid.

25 8. The commissioner of finance or his or her designated employees or
26 agents shall have power to inspect premises for the purpose of determin-
27 ing the extent, if any, of liability imposed by this chapter.

28 § 11-2713 Administration of oaths and compelling testimony. a. The
29 commissioner of finance, his or her employees duly designated and
30 authorized by the commissioner, the tax appeals tribunal and any of its
31 duly designated and authorized employees shall have power to administer
32 oaths and take affidavits in relation to any matter or proceeding in the
33 exercise of their powers and duties under this chapter. The commissioner
34 of finance and the tax appeals tribunal shall have power to subpoena and
35 require the attendance of witnesses and the production of books, papers
36 and documents to secure information pertinent to the performance of the
37 duties of the commissioner or of the tax appeals tribunal under this
38 chapter and of the enforcement of this chapter and to examine them in
39 relation thereto, and to issue commissions for the examination of
40 witnesses who are out of the state or unable to attend before such
41 commissioner or the tax appeals tribunal or excused from attendance.

42 b. A justice of the supreme court either in court or at chambers shall
43 have power summarily to enforce by proper proceedings the attendance and
44 testimony of witnesses and the production and examination of books,
45 papers and documents called for by the subpoena of the commissioner of
46 finance or the tax appeals tribunal under this chapter.

47 c. Cross-reference; criminal penalties. For failure to obey subpoenas
48 or for testifying falsely, see section 11-4007 of this title; for
49 supplying false or fraudulent information, see section 11-4009 of this
50 title.

51 d. The officers who serve the summons or subpoena of the commissioner
52 of finance or the tax appeals tribunal under this chapter and witnesses
53 attending in response thereto shall be entitled to the same fees as are
54 allowed to officers and witnesses in civil cases in courts of record,
55 except as otherwise provided under this chapter. Such officers shall be
56 the city sheriff and his or her duly appointed deputies or any officers

1 or employees of the department of finance or the tax appeals tribunal,
2 designated to serve such process.

3 § 11-2714 Interest and penalties. (a) Interest on underpayments. If
4 any annual vault charge is not paid on or before the last date
5 prescribed for payment, without regard to any extension of time granted
6 for payment, interest on such amount at the rate set by the commissioner
7 of finance pursuant to subdivision (g) of this section, or, if no rate
8 is set, at the rate of seven and one-half percent per annum, shall be
9 paid for the period from such last date to the date of payment. In
10 computing the amount of interest to be paid, such interest shall be
11 compounded daily. Interest under this subdivision shall not be paid if
12 the amount thereof is less than one dollar.

13 (b) (1) Failure to file return. (A) In case of failure to file a
14 return under this chapter on or before the prescribed date, determined
15 with regard to any extension of time for filing, unless it is shown that
16 such failure is due to reasonable cause and not due to willful neglect,
17 there shall be added to the amount required to be shown as vault charge
18 on such return five percent of the amount of such charge if the failure
19 is for not more than one month, with an additional five percent for each
20 additional month or fraction thereof during which such failure contin-
21 ues, not exceeding twenty-five percent in the aggregate.

22 (B) In the case of a failure to file a vault charge return within
23 sixty days of the date prescribed for filing of such return, determined
24 with regard to any extension of time for filing, unless it is shown that
25 such failure is due to reasonable cause and not due to willful neglect,
26 the addition to the vault charge under subparagraph (A) of this para-
27 graph shall not be less than the lesser of one hundred dollars or one
28 hundred percent of the amount required to be shown as vault charge on
29 such return.

30 (C) For purposes of this paragraph, the amount of vault charge
31 required to be shown on the return shall be reduced by the amount of any
32 part of the charge which is paid on or before the date prescribed for
33 payment of the charge and by the amount of any credit against the charge
34 which may be claimed upon the return.

35 (2) Failure to pay vault charge shown on return. In case of failure to
36 pay the amount shown as vault charge on a return required to be filed
37 under this chapter on or before the prescribed date, determined with
38 regard to any extension of time for payment, unless it is shown that
39 such failure is due to reasonable cause and not due to willful neglect,
40 there shall be added to the amount shown as vault charge on such return
41 one-half of one percent of the amount of such charge if the failure is
42 not for more than one month, with an additional one-half of one percent
43 for each additional month or fraction thereof during which such failure
44 continues, not exceeding twenty-five percent in the aggregate. For the
45 purpose of computing the addition for any month the amount of vault
46 charge shown on the return shall be reduced by the amount of any part of
47 the charge which is paid on or before the beginning of such month and by
48 the amount of any credit against the charge which may be claimed upon
49 the return. If the amount of vault charge required to be shown on a
50 return is less than the amount shown as such charge on such return, this
51 paragraph shall be applied by substituting such lower amount.

52 (3) Failure to pay vault charge required to be shown on return. In
53 case of failure to pay any amount in respect of any vault charge
54 required to be shown on a return required to be filed under this chapter
55 which is not so shown, including a determination made pursuant to
56 section 11-1106 of this title, within ten days of the date of a notice

1 and demand therefor, unless it is shown that such failure is due to
2 reasonable cause and not due to willful neglect, there shall be added to
3 the amount of vault charge stated in such notice and demand one-half of
4 one percent of such charge if the failure is not for more than one
5 month, with an additional one-half of one percent for each additional
6 month or fraction thereof during which such failure continues, not
7 exceeding twenty-five percent in the aggregate. For the purpose of
8 computing the addition for any month, the amount of vault charge stated
9 in the notice and demand shall be reduced by the amount of any part of
10 the charge which is paid before the beginning of such month.

11 (4) Limitations on additions.

12 (A) With respect to any return, the amount of the addition under para-
13 graph one of this subdivision shall be reduced by the amount of the
14 addition under paragraph two of this subdivision for any month to which
15 an addition applies under both paragraphs one and two. In any case
16 described in subparagraph (B) of paragraph one of this subdivision, the
17 amount of the addition under such paragraph one shall not be reduced
18 below the amount provided in such subparagraph.

19 (B) With respect to any return, the maximum amount of the addition
20 permitted under paragraph three of this subdivision shall be reduced by
21 the amount of the addition under paragraph one of this subdivision,
22 determined without regard to subparagraph (B) of such paragraph one,
23 which is attributable to the charge for which the notice and demand is
24 made and which is not paid within ten days of such notice and demand.

25 (c) Underpayment due to negligence. (1) If any part of an underpayment
26 of a vault charge is due to negligence or intentional disregard of this
27 chapter or any rules or regulations pursuant thereto, but without intent
28 to defraud, there shall be added to the charge a penalty equal to five
29 percent of the underpayment.

30 (2) There shall be added to the charge, in addition to the amount
31 determined under paragraph one of this subdivision, an amount equal to
32 fifty percent of the interest payable under subdivision (a) of this
33 section with respect to the portion of the underpayment described in
34 such paragraph one which is attributable to the negligence or inten-
35 tional disregard referred to in such paragraph one, for the period
36 beginning on the last date prescribed by law for payment of such under-
37 payment, determined without regard to any extension, and ending on the
38 date of the assessment of the charge, or, if earlier, the date of the
39 payment of the charge.

40 (d) Underpayment due to fraud. (1) If any part of an underpayment of a
41 vault charge is due to fraud, there shall be added to the charge a
42 penalty equal to fifty percent of the underpayment.

43 (2) There shall be added to the charge, in addition to the penalty
44 determined under paragraph one of this subdivision, an amount equal to
45 fifty percent of the interest payable under subdivision (a) of this
46 section with respect to the portion of the underpayment described in
47 such paragraph one which is attributable to fraud, for the period begin-
48 ning on the last day prescribed by law for payment of such underpayment,
49 determined without regard to any extension, and ending on the date of
50 the assessment of the charge, or, if earlier, the date of the payment of
51 the charge.

52 (3) The penalty under this subdivision shall be in lieu of any other
53 addition to the vault charge imposed by subdivision (b) or (c) of this
54 section.

55 (e) Additional penalty. Any person who, with fraudulent intent, shall
56 fail to pay any vault charge imposed by this chapter, or to make,

1 render, sign or certify any return, or to supply any information within
2 the time required by or under this chapter, shall be liable for a penal-
3 ty of not more than one thousand dollars, in addition to any other
4 amounts required under this chapter to be imposed, assessed and
5 collected by the commissioner of finance. The commissioner of finance
6 shall have the power, in his or her discretion, to waive, reduce or
7 compromise any penalty under this subdivision.

8 (f) The interest and penalties imposed by this section shall be paid
9 and disposed of in the same manner as other revenues from this chapter.
10 Unpaid interest and penalties may be enforced in the same manner as the
11 vault charge imposed by this chapter.

12 (g)(1) Authority to set interest rates. The commissioner of finance,
13 shall set the rate of interest to be paid pursuant to subdivision (a) of
14 this section, but if no such rate of interest is set, such rate shall be
15 deemed to be set at seven and one-half percent per annum. Such rate
16 shall be the rate prescribed in paragraph two of this subdivision but
17 shall not be less than seven and one-half percent per annum. Any such
18 rate set by the commissioner of finance shall apply to vault charges, or
19 any portion thereof, which remain or become due on or after the date on
20 which such rate becomes effective and shall apply only with respect to
21 interest computed or computable for periods or portions of periods
22 occurring in the period in which such rate is in effect.

23 (2) General rule. The rate of interest set under this subdivision
24 shall be the sum of (i) the federal short-term rate as provided under
25 paragraph three of this subdivision, plus (ii) five percentage points.

26 (3) Federal short-term rate. For purposes of this subdivision:

27 (A) The federal short-term rate for any month shall be the federal
28 short-term rate determined by the United States secretary of the treas-
29 ury during such month in accordance with subsection (d) of section
30 twelve hundred seventy-four of the internal revenue code for use in
31 connection with section six thousand six hundred twenty-one of the
32 internal revenue code. Any such rate shall be rounded to the nearest
33 full percent, or, if a multiple of one-half of one percent, such rate
34 shall be increased to the next highest full percent.

35 (B) Period during which rate applies.

36 (i) In general. Except as provided in clause (ii) of this subpara-
37 graph, the federal short-term rate for the first month in each calendar
38 quarter shall apply during the first calendar quarter beginning after
39 such month.

40 (ii) Special rule for the month of September, nineteen hundred eight-
41 y-nine. The federal short-term rate for the month of April, nineteen
42 hundred eighty-nine shall apply with respect to setting the rate of
43 interest for the month of September, nineteen hundred eighty-nine.

44 (4) Publication of interest rate. The commissioner of finance shall
45 cause to be published in the City Record, and give other appropriate
46 general notice of, the interest rate to be set under this subdivision no
47 later than twenty days preceding the first day of the calendar quarter
48 during which such interest rate applies. The setting and publication of
49 such interest rate shall not be included within paragraph (a) of subdi-
50 vision five of section one thousand forty-one of the city charter of the
51 preceding municipality as it existed January first, nineteen hundred
52 ninety-four relating to the definition of a rule.

53 (h) Miscellaneous. (1) The certificate of the commissioner of finance
54 to the effect that a vault charge has not been paid, that a vault has
55 not been licensed, that a return has not been filed, that access has not

1 been allowed, or that information has not been supplied pursuant to the
2 provisions of this chapter, shall be presumptive evidence thereof.

3 (2) Cross-reference: For criminal penalties, see chapter forty of this
4 title.

5 § 11-2715 Notices and limitations of time. a. Any notice authorized
6 or required under the provisions of this chapter may be given to the
7 person for whom it is intended by mailing it in a postpaid envelope
8 addressed to such person at the address given in the return filed by him
9 or her pursuant to the provisions of this chapter or in any application
10 made by him or her or, if no such return has been filed or application
11 made, then to the address of the premises immediately adjoining the
12 vault. The mailing of a notice as in this subdivision provided, shall
13 be presumptive evidence of the receipt of the same by the person to whom
14 addressed. Any period of time which is determined according to the
15 provisions of this chapter by the giving of notice shall commence to run
16 from the date of mailing of such notice as in this subdivision provided.

17 b. The provisions of the civil practice law and rules or any other law
18 relative to limitations of time for the enforcement of a civil remedy
19 shall not apply to any proceeding or action taken by the city to
20 appraise, assess, determine, levy or enforce the collection of any vault
21 charge or penalty provided by this chapter. However, except in the case
22 of a wilfully false or fraudulent return with intent to evade the vault
23 charge, no assessment shall be made after the expiration of more than
24 three years from the date of such return; provided, however, that where
25 no return has been filed as provided by law, the annual vault charge may
26 be assessed at any time.

27 c. Where, before the expiration of the period prescribed in this
28 section for the assessment of an additional vault charge, a person has
29 consented in writing that such period be extended, the amount of such
30 additional vault charge due may be determined at any time within such
31 extended period. The period so extended may be further extended by
32 subsequent consents in writing made before the expiration of the
33 extended period.

34 d. If any return, claim, statement, notice, application, or other
35 document required to be filed, or any payment required to be made, with-
36 in a prescribed period or on or before a prescribed date under authority
37 of any provision of this chapter is, after such period or such date,
38 delivered by United States mail to the commissioner of finance, the tax
39 appeals tribunal, bureau, office, officer or person with which or with
40 whom such document is required to be filed, or to which or to whom such
41 payment is required to be made, the date of the United States postmark
42 stamped on the envelope shall be deemed to be the date of delivery.
43 This subdivision shall apply only if the postmark date falls within the
44 prescribed period or on or before the prescribed date for the filing of
45 such document, or for making the payment, including any extension grant-
46 ed for such filing or payment, and only if such document or payment was
47 deposited in the mail, postage prepaid, properly addressed to the
48 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
49 cer or person with which or with whom the document is required to be
50 filed or to which or to whom such payment is required to be made. If any
51 document is sent by United States registered mail, such registration
52 shall be prima facie evidence that such document was delivered to the
53 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
54 cer or person to which or to whom addressed, and the date of registra-
55 tion shall be deemed the postmark date. The commissioner of finance and,
56 where relevant, the tax appeals tribunal are authorized to provide by

1 regulation the extent to which, such provisions with respect to prima
2 facie evidence of delivery and the postmark date, shall apply to certi-
3 fied mail. This subdivision shall apply in the case of postmarks not
4 made by the United States postal service only if and to the extent
5 provided by regulation of the commissioner of finance or, where rele-
6 vant, the tax appeals tribunal.

7 e. When the last day prescribed under authority of this chapter,
8 including any extension of time, for performing any act falls on a
9 Saturday, Sunday or legal holiday in the state, the performance of such
10 act shall be considered timely if it is performed on the next succeeding
11 day which is not a Saturday, Sunday or legal holiday.

12 § 11-2715.1 Vault charge amnesty program. a. Notwithstanding any other
13 provision of law to the contrary, there is hereby established a nine-
14 month amnesty program, beginning January first, nineteen hundred eight-
15 y-nine and ending September thirtieth, nineteen hundred eighty-nine
16 (hereinafter referred to as the "amnesty period"), for all persons owing
17 the annual vault charge imposed by this chapter. Such amnesty program
18 shall be administered by the commissioner of finance and shall apply to
19 liabilities for annual vault charge years ending prior to June first,
20 nineteen hundred eighty-nine.

21 b. (1) A person seeking amnesty pursuant to this section must, during
22 the amnesty period, file a written application therefor with the commis-
23 sioner of finance, on a form prescribed by the commissioner, and must
24 provide such information as the commissioner may require. In order to
25 qualify for amnesty, such person must pay all annual vault charges for
26 which he or she is liable. Upon payment by such person to the commis-
27 sioner of all such charges as provided in this subdivision, the commis-
28 sioner shall waive any applicable penalties and interest, and no civil,
29 administrative or criminal action or proceeding shall be brought against
30 such person with respect to the charges so paid. In addition, the
31 commissioner shall release the lien binding upon the premises immedi-
32 ately adjoining the vault pursuant to subdivision c of section 11-2711 of
33 this chapter for charges which became payable prior to the time such
34 person acquired title to the premises. Failure to pay all charges as
35 provided in this subdivision shall invalidate any amnesty granted pursu-
36 ant to this section.

37 (2) In the case of any vault adjoining premises owned by a person who
38 (A) prior to January first, nineteen hundred eighty-nine, paid all annu-
39 al vault charges and interest and penalties for which he or she was
40 liable, and (B) is otherwise in full compliance with this chapter, the
41 commissioner of finance shall release the lien binding upon the premises
42 immediately adjoining the vault pursuant to subdivision c of section
43 11-2711 of this chapter for charges which became payable prior to the
44 time such person acquired title to the premises.

45 c. Amnesty shall not be granted to any person subject to the annual
46 vault charge who is a party to any civil litigation which is pending on
47 the date of such person's application in any court of this state or the
48 United States for nonpayment or other delinquency in relation to the
49 annual vault charge. A civil litigation shall not be deemed to be pend-
50 ing if such person withdraws from such litigation prior to the granting
51 of amnesty.

52 d. No refund or credit shall be granted of any penalty or interest
53 paid prior to the time the person subject to the annual vault charge
54 makes a request for amnesty pursuant to subdivision b of this section.

1 e. Unless the commissioner of finance on his or her own motion rede-
2 termines the amount of the annual vault charge, no refund or credit
3 shall be granted of any charges paid under this section.

4 f. The commissioner of finance shall formulate such regulations as are
5 necessary, issue forms and instructions, and take any and all other
6 actions necessary to implement the provisions of this section. Further-
7 more, prior to and throughout the duration of the amnesty period, the
8 commissioner of finance shall implement a plan for prominently announc-
9 ing and explaining the amnesty program. Such plan shall be reasonably
10 calculated to inform all property owners who may be liable for vault
11 charges and may include written announcements sent in tax bills and
12 other mailings done by the city of Staten Island to property owners,
13 public service announcements, advertisements in newspapers of general
14 circulation and notification of community boards. The plan shall
15 include, but not be limited to, information which explains the determi-
16 nation of vault size and charge.

17 § 11-2715.3 Severability. If any clause, sentence, paragraph, section
18 or part of this chapter or the application thereof to any person or
19 circumstance shall for any reason be adjudged by a court of competent
20 jurisdiction to be invalid, such judgment shall not affect, impair or
21 invalidate the remainder of this chapter or the application thereof to
22 other persons or circumstances, but shall be confined in its operation
23 to the clause, sentence, paragraph, section or part thereof directly
24 involved in the controversy in which such judgment shall have been
25 rendered and to the person or circumstance involved.

26 § 11-2716 Construction and enforcement. This chapter shall be
27 construed and enforced in conformity with chapter nine hundred forty-
28 nine of the laws of nineteen hundred sixty-two, pursuant to which it is
29 enacted.

30 § 11-2717 Effective date. This chapter shall take effect July first,
31 nineteen hundred sixty-two and shall remain in effect so long as the
32 power of the city to adopt such laws for revenue purposes shall exist.

33 CHAPTER 28

34 CLAIMS AGAINST FIRE INSURANCE PROCEEDS

35 § 11-2801 Claims against fire insurance proceeds. Definitions. 1. As
36 used in this chapter, any inconsistent provision of law notwithstanding,
37 the following terms shall have the following meanings:

38 (a) "Commissioner" means the commissioner of finance.

39 (b) "Real property" means property upon which there is erected any
40 residential, commercial or industrial building or structure except a one
41 or two family residential structure.

42 (c) "Lien" means any lien including liens for taxes, special ad valo-
43 rem levies, special assessments and municipal charges arising by opera-
44 tion of law against property in favor of the city and remaining undisc-
45 harged for a period of one year or more.

46 (d) "Board" means the board created by subdivision five of this
47 section.

48 (e) "Special lien" means a lien upon fire insurance proceeds pursuant
49 to this chapter and chapter seven hundred thirty-eight of the laws of
50 nineteen hundred seventy-seven.

51 (f) "Fund" means the fire insurance proceeds fund created pursuant to
52 subdivision ten of this section.

53 2. The commissioner shall file a notice of intention to claim against
54 the proceeds of fire insurance policies pursuant to section twenty-two

1 of the general municipal law with the state superintendent of insurance
2 for entry in the index of liens maintained by him or her as provided in
3 section three hundred thirty-one of the insurance law.

4 3. Prior to the payment of any proceeds of a policy of insurance for
5 damages caused by fire to real property, which policy insures the inter-
6 est of an owner and is issued on real property located within the city,
7 and following notification to the commissioner by an insurer of the
8 filing of a claim for payment of such proceeds, the commissioner shall
9 claim, by serving a certificate of lien, against such proceeds to the
10 extent of any lien, including interest and penalties to the date of the
11 claim, thereon, which claim when made and perfected in the manner
12 provided for in section twenty-two of the general municipal law and
13 section three hundred thirty-one of the insurance law, shall constitute
14 a special lien against such proceeds and shall, as to such proceeds, be
15 prior to all other liens and claims except the claim of a mortgagee of
16 record named in such policy. Notice of the service of the certificate
17 of the special lien shall be given to the insured by certified mail.

18 4. The provisions of this chapter shall not be deemed or construed to
19 alter or impair the right of the city to acquire or enforce any lien
20 against property but shall be in addition to any other power provided by
21 law to acquire or enforce such right.

22 5. The fire insurance proceeds claims board is hereby established to
23 administer the provisions of subdivisions six through thirteen of this
24 section. The board shall consist of the first deputy mayor, who shall
25 be chairperson, the commissioner of buildings, the commissioner of hous-
26 ing preservation and development, and the commissioner of finance, each
27 of whom shall have the power to designate an alternate to represent him
28 or her at board meetings with all the rights and powers, including the
29 right to vote, reserved to all board members, provided that such desig-
30 nation shall be in writing to the chairperson. So far as practicable and
31 subject to the approval of the mayor, the services of all other city
32 departments and agencies shall be made available by their respective
33 heads to the board for the carrying out of its functions. Each member
34 shall serve without additional compensation except for expenses actually
35 incurred.

36 6. Whenever the proceeds of policy of fire insurance which will be or
37 has been paid to the city instead of an insured, all or part of such
38 proceeds may be paid or released to the insured if the insured satisfies
39 the board that the affected premises have been or will be repaired or
40 restored, that such repairs or restoration are in the public interest,
41 and the insured is issued and complies with a certificate of the board
42 pursuant to this chapter. To secure such payment or release of proceeds
43 the insured must notify the board within forty-five days after the mail-
44 ing to the insured of a notice of the service of the certificate of
45 special lien pursuant to subdivision three of this section, of the
46 intention to restore or repair the affected premises and must file with
47 the board a completed application with all required supporting documen-
48 tation pursuant to subdivision seven of this section within sixty days
49 thereafter, unless the board grants an extension for a stated period of
50 time.

51 7. The release or return to the insured of any amounts to which he or
52 she or it would otherwise be entitled to claim shall be subject to the
53 following conditions:

54 (a) Such release or return shall be subject to the repair or restora-
55 tion of the affected premises, in accordance with applicable building

1 laws, to the condition it was in prior to the time the lien of the city
2 arose, or to an improved condition.

3 (b) The insured shall file with the board an application in affidavit
4 form, with such supporting documentation as the board shall require,
5 containing the following:

6 (i) A complete description of the nature and extent of the damage to
7 the insured premises and of the condition of the premises prior to the
8 time the lien of the city arose;

9 (ii) A complete description of the nature of the repairs or restora-
10 tion to be undertaken and the cost thereof;

11 (iii) A statement as to the source of funds needed to complete such
12 repairs or restoration if the insurance proceeds are not sufficient
13 therefor;

14 (iv) The name and address of each contractor who will effect such
15 repairs or restoration;

16 (v) An estimated time schedule showing how long the repairs or resto-
17 ration, and each phase thereof, will take; and

18 (vi) Such other information as may be required by the board to enable
19 it to determine whether the repairs or restoration are in the public
20 interest and will be or have been timely and properly made.

21 (c) Upon a preliminary approval by the board of an application pursu-
22 ant to paragraph (b) of this subdivision, the board may issue a certif-
23 icate, to be signed by the chairperson or his or her designee; evidenc-
24 ing the right of release to the insured of amounts representing
25 insurance proceeds, upon such conditions as may be set forth therein.
26 The repairs or restoration required by the board shall be completed in
27 compliance with the terms and conditions of the certificate prior to the
28 release or return of any part of the insurance proceeds, provided howev-
29 er that the board may, upon the written request of the insured and in
30 its sole discretion, approve a prior release of such proceeds or a
31 portion thereof, in a lump sum or in installments, where the insured
32 certifies and demonstrates that such release is required to permit such
33 repairs or restoration to go forward. Any such insurance proceeds
34 released or returned prior to the completion of the repairs or restora-
35 tion required by the board may be paid directly to the contractor or
36 contractors responsible for making such repairs or restoration. Such
37 payment shall, to the extent thereof, release the board from further
38 liability to the insured.

39 8. If the insured: (i) fails to notify the city of his or her or its
40 intention to repair or restore the affected premises as required in
41 subdivision six of this section, (ii) fails to file a completed applica-
42 tion pursuant to this chapter, or (iii) fails to obtain a certificate
43 from the board or comply therewith within the time set forth, the right
44 of the insured to assert a claim against the insurance proceeds, except
45 to the extent they exceed the amount of the lien, shall terminate.

46 9. Until such termination, any insurance proceeds received by the city
47 shall be deposited in a special fund and shall be retained therein.
48 Upon termination of the insured's right to claim against the proceeds,
49 the proceeds and any interest accrued thereon shall be applied to the
50 liens affecting the premises in a manner determined by the board and may
51 be transferred to the general fund.

52 10. There shall be established in the office of the commissioner a
53 fund for the deposit of fire insurance proceeds to be held and applied
54 in accordance with this chapter. Such funds shall not be held together
55 with the general tax levies in the general fund.

1 11. The lien or liens against the affected premises upon which the
2 special lien against proceeds is based shall continue in full force and
3 effect except to the extent that such lien or liens are or have been
4 paid.

5 12. The board may, pursuant to this chapter, release, compromise or
6 adjust the special lien upon insurance proceeds created by this chapter.
7 Any certificate issued by such board pursuant to this chapter shall be
8 for the purpose of preserving and evidencing the right of release of the
9 special lien created by this chapter, shall be subject solely to the
10 provisions of this chapter, and shall not be deemed to be a contract
11 subject to city regulation. Any repair or restoration performed in
12 anticipation of a release of insurance proceeds shall not be deemed to
13 be a public work or municipal project nor to have been done pursuant to
14 a municipal contract.

15 13. The board shall be empowered to promulgate rules and regulations
16 and to adopt approved forms to be used by applicants.

17 CHAPTER 40

18 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

19 § 11-4001 Definitions. (a) As used in this chapter, the term "person"
20 shall include, but shall not be limited to, an individual, corporation
21 (including a dissolved corporation), partnership, association, trust or
22 estate.

23 (b) As used in this chapter, the term "person" shall also include an
24 officer, employee or agent of a corporation; a member, employee or agent
25 of a partnership or association; an employee or agent of an individual
26 proprietorship; an employee or agent of an estate or trust; or a fiduci-
27 ary.

28 (c) As used in this chapter, the term "felony" and the term "misdemea-
29 nor" shall have the same meaning as they have in the penal law, and the
30 disposition of such offenses and the sentences imposed therefor shall be
31 as provided in such law, except: (1) notwithstanding the provisions of
32 paragraph a of subdivision one of section 80.00 and paragraph (a) of
33 subdivision one of section 80.10 of the penal law relating to the fine
34 for a felony, the court may impose a fine not to exceed the greater of
35 double the amount of the underpaid tax liability resulting from the
36 commission of the crime or fifty thousand dollars, or, in the case of a
37 corporation the fine may not exceed the greater of double the amount of
38 the underpaid tax liability resulting from the commission of the crime
39 or two hundred fifty thousand dollars, and (2) notwithstanding the
40 provisions of subdivision one of section 80.05 and paragraph (b) of
41 subdivision one of section 80.10 of the penal law relating to the fine
42 for a class A misdemeanor, the court may impose a fine not to exceed ten
43 thousand dollars, except that in the case of a corporation the fine may
44 not exceed twenty thousand dollars.

45 (d) As used in this chapter:

46 (1) "city" shall mean the city of Staten Island; and

47 (2) "state" shall mean the state of New York.

48 § 11-4002 Tax fraud acts. (a) As used in this chapter, "tax fraud act"
49 means willfully engaging in an act or acts or willfully causing another
50 to engage in an act or acts pursuant to which a person:

51 (1) fails to make, render, sign, certify, or file any return or report
52 required under the provisions of any designated chapter of this title or
53 any rule or regulation promulgated thereunder within the time required

1 by or under the provisions of any designated chapter of this title or
2 such rule or regulation;

3 (2) knowing that a return, report, statement or other document under
4 any designated chapter of this title contains any materially false or
5 fraudulent information, or omits any material information, files or
6 submits that return, report, statement or document with the city or the
7 state, or with any public office or public officer of the city or the
8 state;

9 (3) knowingly supplies or submits materially false or fraudulent
10 information in connection with any return, audit, investigation, or
11 proceeding or fails to supply information within the time required by or
12 under the provisions of any designated chapter of this title or any rule
13 or regulation promulgated under any designated chapter of this title;

14 (4) engages in any scheme to defraud the city or the state or a
15 government instrumentality of the city or of the state by false or frau-
16 dentul pretenses, representations or promises as to any material matter,
17 in connection with any tax imposed under any designated chapter of this
18 title or any matter under any designated chapter of this title;

19 (5) fails to remit any tax collected in the name of the city or the
20 state or on behalf of the city or the state when such collection is
21 required under any designated chapter of this title;

22 (6) fails to collect any tax required to be collected under chapter
23 twelve, thirteen, twenty-three-A, twenty-three-B or twenty-five of this
24 title;

25 (7) with intent to evade any tax imposed under any designated chapter
26 of this title, fails to pay such tax; or

27 (8) issues an exemption certificate, interdistributor sales certifi-
28 cate, resale certificate, or any other document capable of evidencing a
29 claim that taxes imposed under a designated chapter of this title do not
30 apply to a transaction, which he or she does not believe to be true and
31 correct as to any material matter, which omits any material information,
32 or which is false, fraudulent, or counterfeit.

33 (b) For purposes of this section, the term "willfully" shall mean
34 acting with either intent to defraud, intent to evade the payment of
35 taxes or intent to avoid a requirement of this title, a lawful require-
36 ment of the commissioner or a known legal duty.

37 (c) For purposes of this chapter, the term "designated chapter" shall
38 mean chapter five, six, seven, eight, nine, eleven, twelve, thirteen,
39 fourteen, fifteen, twenty-one, twenty-two, twenty-three-A, twenty-four,
40 twenty-five or twenty-seven of this title.

41 § 11-4003 City criminal tax fraud in the fifth degree. A person
42 commits city criminal tax fraud in the fifth degree when he or she
43 commits a tax fraud act. City criminal tax fraud in the fifth degree is
44 a class A misdemeanor.

45 § 11-4004 City criminal tax fraud in the fourth degree. A person
46 commits city criminal tax fraud in the fourth degree when he or she
47 commits a tax fraud act or acts and, with the intent to evade any tax
48 due under any designated chapter of this title, or to defraud the city
49 or the state or any instrumentality of the city or the state, the person
50 pays the city or the state or any public office or public officer of the
51 city or the state or any instrumentality of the city or state, whether
52 by means of underpayment or receipt of refund or both, in a period of
53 not more than one year in excess of three thousand dollars less than the
54 tax liability that is due. City criminal tax fraud in the fourth degree
55 is a class E felony.

1 § 11-4005 City criminal tax fraud in the third degree. A person
2 commits city criminal tax fraud in the third degree when he or she
3 commits a tax fraud act or acts and, with the intent to evade any tax
4 due under any designated chapter of this title, or to defraud the city
5 or the state or any instrumentality of the city or the state, the person
6 pays the city or the state or any public office or public officer of the
7 city or the state or any instrumentality of the city or state, whether
8 by means of underpayment or receipt of refund or both, in a period of
9 not more than one year in excess of ten thousand dollars less than the
10 tax liability that is due. City criminal tax fraud in the third degree
11 is a class D felony.

12 § 11-4006 City criminal tax fraud in the second degree. A person
13 commits city criminal tax fraud in the second degree when he or she
14 commits a tax fraud act or acts and, with the intent to evade any tax
15 due under any designated chapter of this title, or to defraud the city
16 or the state or any instrumentality of the city or the state, the person
17 pays the city or the state or any public office or public officer of the
18 city or the state or any instrumentality of the city or state, whether
19 by means of underpayment or receipt of refund or both, in a period of
20 not more than one year in excess of fifty thousand dollars less than the
21 tax liability that is due. City criminal tax fraud in the second degree
22 is a class C felony.

23 § 11-4007 City criminal tax fraud in the first degree. A person
24 commits city criminal tax fraud in the first degree when he or she
25 commits a tax fraud act or acts and, with the intent to evade any tax
26 due under any designated chapter of this title, or to defraud the city
27 or the state or any instrumentality of the city or the state, the person
28 pays the city or the state or any public office or public officer of the
29 city or the state or any instrumentality of the city or state, whether
30 by means of underpayment or receipt of refund or both, in a period of
31 not more than one year in excess of one million dollars less than the
32 tax liability that is due. City criminal tax fraud in the first degree
33 is a class B felony.

34 § 11-4008 Aggregation. For purposes of this chapter, the payments due
35 and not paid under any designated chapter of this title pursuant to a
36 common scheme or plan or due and not paid, within one year, may be
37 charged in a single count, and the amount of underpaid tax liability
38 incurred, within one year, may be aggregated in a single count.

39 § 11-4009 Non-preemption; penal law anticipatory offenses and accessori-
40 al liability apply. (a) Unless expressly stated otherwise, the penal-
41 ties provided in this chapter or under any other chapter of this title
42 shall not preclude prosecution for any offense under the penal law or
43 any other criminal statute.

44 (b) The offenses specified in title G of the penal law and the
45 provisions of article twenty of the penal law are applicable to all
46 offenses defined in this chapter.

47 § 11-4010 Failure to obey subpoenas; false testimony. (a) Any person
48 who, being duly subpoenaed, pursuant to chapter five, six, seven, eight,
49 nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-
50 two, twenty-four, twenty-five or twenty-seven of this title or the
51 provisions of the civil practice law and rules, in connection with a
52 matter arising under any of such chapters, to attend as a witness or to
53 produce books, accounts, records, memoranda, documents or other papers,
54 (i) fails or refuses to attend without lawful excuse, (ii) refuses to be
55 sworn, (iii) refuses to answer any material and proper question, or (iv)
56 refuses, after reasonable notice, to produce books, papers and documents

1 in his or her possession or under his or her control which constitute
2 material and proper evidence shall be guilty of a misdemeanor.

3 (b) Any person who shall testify falsely in any material matter pend-
4 ing before the commissioner of finance with respect to any of the chap-
5 ters specified in subdivision (a) of this section shall be guilty of and
6 punishable for perjury.

7 § 11-4011 Failure to file bond. Any person willfully failing to file a
8 bond where such filing is required pursuant to section 11-1203, 11-1304
9 or 11-2505 of this title shall be guilty of a misdemeanor. (a) Any
10 person who willfully attempts in any manner to evade or defeat any tax
11 imposed by chapter thirteen of this title or payment thereof where such
12 tax is unpaid on ten thousand cigarettes or more or has previously been
13 convicted two or more times of a crime set forth in this chapter relat-
14 ing to cigarette taxes; shall be guilty of a class E felony.

15 (b) Any person, other than an agent so authorized by the commissioner
16 of finance, who possesses or transports for the purpose of sale any
17 unstamped or unlawfully stamped packages of cigarettes subject to tax
18 under chapter thirteen of this title, or who sells or offers for sale
19 unstamped or unlawfully stamped packages of cigarettes in violation of
20 the provisions of such chapter shall be guilty of a misdemeanor. Any
21 person who violates the provisions of this subdivision after having
22 previously been convicted of a violation of this subdivision within the
23 preceding five years shall be guilty of a class E felony.

24 (c) (1) Any person, other than an agent so authorized by the commis-
25 sioner of finance, who willfully possesses or transports for the purpose
26 of sale ten thousand or more cigarettes subject to the tax imposed by
27 chapter thirteen of this title in any unstamped or unlawfully stamped
28 packages or who willfully sells or offers for sale ten thousand or more
29 cigarettes in any unstamped or unlawfully stamped packages in violation
30 of such chapter shall be guilty of a class E felony.

31 (2) Any person, other than an agent appointed by the commissioner of
32 finance, who willfully possesses or transports for the purpose of sale
33 thirty thousand or more cigarettes subject to the tax imposed by chapter
34 thirteen of this title in any unstamped or unlawfully stamped packages
35 or who willfully sells or offers for sale thirty thousand or more ciga-
36 rettes in any unstamped or unlawfully stamped packages in violation of
37 such chapter shall be guilty of a class D felony.

38 (d) For the purposes of this section, the possession or transportation
39 within this city by any person, other than an agent, at any one time of
40 five thousand or more cigarettes in unstamped or unlawfully stamped
41 packages shall be presumptive evidence that such cigarettes are
42 possessed or transported for the purpose of sale and are subject to the
43 tax imposed by chapter thirteen of this title. With respect to such
44 possession or transportation, any provisions of chapter thirteen of this
45 title providing for a time period during which a use tax imposed by such
46 chapter may be paid on unstamped cigarettes or unlawfully or improperly
47 stamped cigarettes or during which such cigarettes may be returned to an
48 agent shall not apply. The possession within this city of more than four
49 hundred cigarettes in unstamped or unlawfully stamped packages by any
50 person other than an agent at any one time shall be presumptive evidence
51 that such cigarettes are subject to tax as provided by chapter thirteen
52 of this title.

53 (e) Nothing in this section shall apply to common or contract carriers
54 or warehouseman while engaged in lawfully transporting or storing
55 unstamped packages of cigarettes as merchandise, nor to any employee of
56 such carrier or warehouseman acting within the scope of his employment,

1 nor to public officers or employees in the performance of their official
2 duties requiring possession or control of unstamped or unlawfully
3 stamped packages of cigarettes, nor to temporary incidental possession
4 by employees or agents of persons lawfully entitled to possession, not
5 to persons whose possession is for the purpose of aiding police officers
6 in performing their duties.

7 (f) Any willful act or omission, other than those described in section
8 11-4002 of this chapter or subdivision (a), (b), (c), (d), (e) or (g) of
9 this section, by any person which constitutes a violation of any
10 provision of chapter thirteen of this title or subchapter one of chapter
11 two of title twenty of the code of the preceding municipality shall
12 constitute a misdemeanor.

13 (g) Any person who falsely or fraudulently makes, alters or counter-
14 feits any stamp prescribed by the commissioner of finance under the
15 provisions of chapter thirteen of this title, or causes or procures to
16 be falsely or fraudulently made, altered or counterfeited any such
17 stamp, or knowingly and willfully utters, purchases, passes or tenders
18 as true any such false, altered or counterfeited stamp, or knowingly and
19 willfully possess any cigarettes in packages bearing any such false,
20 altered or counterfeited stamp, and any person who knowingly and will-
21 fully makes, causes to be made, purchases or receives any device for
22 forging or counterfeiting any stamp, prescribed by the commissioner of
23 finance under the provisions of chapter thirteen of this title, or who
24 knowingly and willfully possesses any such device, shall be guilty of a
25 class E felony. For the purposes of this subdivision, the words "stamp
26 prescribed by the commissioner of finance" shall include a stamp,
27 impression or imprint made by a metering machine, the design of which
28 has been approved by the commissioner of finance and the state tax
29 commission.

30 § 11-4012.1 Tobacco products tax. (a) Attempt to evade or defeat tax.
31 Any person who willfully attempts in any manner to evade or defeat any
32 tax imposed by section 11-1302.1 of this chapter or the payment thereof
33 shall, in addition to any other penalties provided by law, be guilty of
34 a misdemeanor.

35 (b) Any willful act or omission with respect to the tax imposed by
36 section 11-1302.1 of this chapter, with the exception of those described
37 in subdivision (a) of this section, by any person which constitutes a
38 violation of any provision of chapter thirteen of this title or chapter
39 two of title twenty of the code of the preceding municipality shall
40 constitute a misdemeanor.

41 § 11-4014 Tax on commercial motor vehicles and motor vehicles for
42 transportation of passengers. (a) Any person who counterfeits or forges,
43 or causes or procures to be counterfeited or forged, or aids or assists
44 in counterfeiting or forging, by any way, art, or means, any stamp,
45 indicia of payment or indicia that no tax is payable authorized by chap-
46 ter eight of this title, or who knowingly acquires, possesses, disposes
47 of or uses such a counterfeited or forged stamp, indicia of payment or
48 indicia that no tax is payable, or who transfers a stamp, indicia of
49 payment or indicia that no tax is payable where such a transfer is not
50 authorized by such chapter shall be guilty of a misdemeanor.

51 (b) The owner or driver of any motor vehicle subject to the tax
52 imposed by chapter eight who, upon demand, shall fail to exhibit the
53 stamp or other indicia of payment of the tax to the commissioner of
54 finance, his duly authorized agent or employee, or any police officer of
55 this city or state, as required by subdivision a of section 11-809 of
56 this chapter, shall be guilty of a misdemeanor.

1 § 11-4015 Tax on owners of motor vehicles. (a) Any person who counter-
2 feits or forges, or causes or procures to be counterfeited or forged, or
3 aids or assists in counterfeiting or forging, by any way, art, or means,
4 any receipt or other document evidencing payment or exemption from the
5 tax imposed by chapter twenty-two of this title, or who knowingly
6 acquires, possesses, disposes of or uses such a counterfeited or forged
7 receipt or other document, shall be guilty of a misdemeanor.

8 (b) Any person who uses, operates or parks or permits the use, opera-
9 tion or parking upon any public highway or street of a motor vehicle
10 owned by him or her or under his or her control for which the tax
11 imposed by chapter twenty-two of this title has not been paid in accord-
12 ance with the provisions of such chapter and the regulations prescribed
13 thereunder shall be guilty of a misdemeanor. For the purpose of this
14 subdivision any person using, operating or parking a motor vehicle shall
15 be presumed to be doing so with the permission of the owner of such
16 motor vehicle.

17 (c) To the extent that any other section of this chapter is applicable
18 to the tax imposed by chapter twenty-two of this title, any reference in
19 such section to the commissioner of finance shall be deemed a reference
20 to the commissioner of motor vehicles or to the commissioner of finance
21 if designated as his or her agent.

22 § 11-4016 Hotel room occupancy tax. (a) Any person who willfully fails
23 to file a registration certificate as required pursuant to the
24 provisions of chapter twenty-five of this title and such data in
25 connection therewith as the commissioner of finance by regulation or
26 otherwise may require, or willfully fails to display or surrender a
27 certificate of authority as required by chapter twenty-five of this
28 title, or willfully assigns or transfers such certificate of authority,
29 shall be guilty of a misdemeanor, provided, however, that the provisions
30 of this subdivision shall not apply to a failure to surrender a certifi-
31 cate of authority which is required to be surrendered where business
32 never commenced.

33 (b) Any person who willfully fails to charge separately the tax
34 imposed under chapter twenty-five of this title or willfully fails to
35 state such tax separately on any bill, statement, memorandum or receipt
36 issued or employed by such person upon which the tax is required to be
37 stated separately as provided in such chapter, or who shall refer or
38 cause reference to be made to this tax in a form or manner other than
39 required by such chapter, shall be guilty of a misdemeanor.

40 § 11-4017 Violation of secrecy provisions. Any person who violates the
41 provisions of subdivision a of section 11-1214, subdivision (a) of
42 section 11-2415, subdivision a of section 11-2115, subdivision a of
43 section 11-1516, subdivision a of section 11-818, subdivision a of
44 section 11-716, subdivision a of section 11-2215, subdivision a of
45 section 11-1116, subdivision one of section 11-688, subdivision one of
46 section 11-538, subdivision a of section 11-2516, or subdivision a of
47 section 11-1414 of this title shall be guilty of a misdemeanor.

48 § 11-4018 Other offenses. (a) Any person who willfully fails to keep
49 or retain any records required to be kept or retained by chapter seven,
50 twelve, fourteen, twenty-one, twenty-two, twenty-four or twenty-seven of
51 this title shall be guilty of a misdemeanor.

52 (b) Any person willfully simulating, altering, defacing, destroying or
53 removing any evidence of the filing of a return or the payment of a tax
54 provided for in chapter twenty-one of this title shall be guilty of a
55 misdemeanor.

1 (c) Any person failing to file a certificate of registration or infor-
2 mation registration certificate as required by chapter eight of this
3 title shall be guilty of a misdemeanor.

4 (d) Any person refusing access to personnel authorized by the commis-
5 sioner of finance to inspect any vault or any premises concerning which
6 a return or information return may be required under chapter twenty-sev-
7 en of this title shall be guilty of a misdemeanor.

8 § 11-4019 Jurisdiction. For purposes of the taxes imposed by chapter
9 five or six of this title, any prosecution under this chapter may be
10 conducted in any county where the person against whom a violation or
11 violations of any of the provisions of this chapter are charged resides
12 or has a place of business, or from which such person received any
13 income, or in any county in which any such violation is committed.

14 (a) Notwithstanding any other provision of law, the corporation coun-
15 sel shall have concurrent jurisdiction with any district attorney in the
16 prosecution of any offenses under this chapter.

17 (b) Notwithstanding any other provision of law, the attorney general
18 shall have concurrent jurisdiction with the corporation counsel and with
19 any district attorney in the prosecution of any offenses under this
20 chapter relating to the tax imposed by chapter thirteen of this title,
21 as well as any offenses arising out of such prosecution.

22 § 11-4020 Disposition of fines. All fines levied under this chapter
23 shall be paid to the commissioner of finance and deposited in the gener-
24 al fund of the city.

25 § 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police
26 officer designated in section 1.20 of the criminal procedure law or a
27 peace officer designated in subdivision five of section 2.10 of such
28 law, acting pursuant to his or her special duties, shall discover any
29 cigarettes subject to any tax provided by chapter thirteen of this
30 title, and upon which the tax has not been paid or the stamps not
31 affixed as required by such chapter, they are hereby authorized and
32 empowered forthwith to seize and take possession of such cigarettes,
33 together with any vending machine or receptacle in which they are held
34 for sale. Such cigarettes, vending machine or receptacle seized by a
35 police officer or such peace officer shall be turned over to the commis-
36 sioner of finance.

37 (b) The seized cigarettes and any vending machine or receptacle seized
38 therewith, but not the money contained in such vending machine or recep-
39 tacle shall thereupon be forfeited to the city, unless the person from
40 whom the seizure is made, or the owner of such seized cigarettes, vend-
41 ing machine or receptacle, or any other person having an interest in
42 such property, shall within ten days of such seizure, apply to the
43 commissioner of finance for a hearing to determine the propriety of the
44 seizure, or unless the commissioner of finance shall on his or her own
45 motion release the seized cigarettes, vending machine or receptacle.
46 After such hearing the commissioner of finance shall give notice of his
47 or her decision to the petitioner. The decision of the commissioner
48 shall be reviewable for error, illegality, unconstitutionality or any
49 other reason whatsoever by a proceeding under article seventy-eight of
50 the civil practice law and rules if application therefor is made to the
51 supreme court within thirty days after the giving of the notice of such
52 decision. Such proceeding shall not be instituted unless there shall
53 first be filed with the commissioner of finance an undertaking, issued
54 by a surety company authorized to transact business in New York state
55 and approved by the superintendent of insurance of New York state as to
56 solvency and responsibility, in such amount as a justice of the supreme

1 court shall approve, to the effect that if such proceeding be dismissed,
2 or the seizure confirmed, the petitioner will pay all costs and charges
3 which may accrue in the prosecution of the proceeding.

4 (c) The commissioner of finance may, within a reasonable time after
5 the forfeiture to the city of such vending machines or receptacles, upon
6 publication of a notice to such effect for at least five successive
7 days, in a newspaper published or circulated in the city, sell such
8 forfeited vending machines or receptacles at public sale and pay the
9 proceeds into the treasury of the city to the credit of the general
10 fund. Such seized vending machines or receptacles may be sold prior to
11 forfeiture if the owner of the seized property consents to the sale.
12 Notwithstanding any other provision of this section, the commissioner of
13 finance may enter into an agreement with the state tax commission to
14 provide for the disposition between the city and state of the proceeds
15 from any such sale. The commissioner of finance may also transfer any
16 seized cigarettes to the state for destruction. All cigarettes forfeited
17 to the state shall be destroyed or used for law enforcement purposes,
18 except that cigarettes that violate, or are suspected of violating,
19 federal trademark laws or import laws shall not be used for law enforce-
20 ment purposes. If the commissioner determines the cigarettes may not be
21 used for law enforcement purposes, the commissioner of finance must,
22 within a reasonable time after the forfeiture to the city of such ciga-
23 rettes, upon publication of a notice to such effect for at least five
24 successive days, prior to destruction, in a newspaper published or
25 circulated in the city, destroy such forfeited cigarettes. Such commis-
26 sioner may, prior to any destruction of cigarettes, permit the true
27 holder of the trademark rights in the cigarettes to inspect such
28 forfeited cigarettes in order to assist in any investigation regarding
29 such cigarettes.

30 (d) In the alternative, the commissioner of finance, on reasonable
31 notice by mail or otherwise, may permit the person from whom said ciga-
32 rettes were seized to redeem the said cigarettes, and any vending
33 machine or receptacle seized therewith, or may permit the owner of any
34 such cigarettes, vending machine or receptacle to redeem the same, by
35 the payment of the tax due, plus a penalty of fifty percent thereof,
36 plus interest on the amount of tax due for each month or fraction there-
37 of after such tax became due, determined without regard to any extension
38 of time for filing or paying, at the rate applicable under subdivision d
39 of section 11-1317 of this title and the costs incurred in such proceed-
40 ing, which total payment shall not be less than five dollars; provided,
41 however, that such seizure and sale or redemption shall not be deemed to
42 relieve any person from fine or imprisonment provided for in this chap-
43 ter for violation of any provisions of this chapter or chapter thirteen
44 of this title.

45 (e) In the alternative, the commissioner of finance may dispose of any
46 cigarettes seized pursuant to this section, except those that violate,
47 or are suspected of violating, federal trademark laws or import laws, by
48 transferring them to the department of correction for sale to or use by
49 incarcerated individuals in such institutions.

50 § 11-4022 Filing of documents. For purposes of the prosecution of
51 offenses under the provisions of this title, reports, returns, state-
52 ments, other documents or other information required to be filed with or
53 delivered to the commissioner of finance shall include such items which
54 under the provisions of this title are required to be recorded or filed
55 with, served upon or delivered to another person, including, but not
56 limited to, a recording officer of any county within the state, county

1 clerk, any other governmental agency or entity, or other entity in its
2 capacity as an agent of the commissioner of finance.

3 § 11-4023 Authority to seal premises. (a) If any person has been
4 finally determined to have engaged in the acts described in subdivision
5 (b) of this section, the commissioner of finance shall be authorized to
6 order:

7 (1) the sealing of any premises operated by such person where such
8 acts occurred; and

9 (2) the removal, sealing or making inoperable of any devices, items or
10 goods used in connection with any of such acts.

11 (b) The following acts shall serve as the basis for a sealing order
12 pursuant to this section:

13 (1) the violation of subdivision a or b of section 11-1303 of this
14 title or section 17-703 or 20-202 of the code of the preceding munici-
15 pality on at least two occasions within a three-year period; or

16 (2) the violation of any provision of chapter thirteen of this title
17 or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivision a or b
18 of section 17-706, 17-715 or 20-202 of the code of the preceding munici-
19 pality on at least three occasions within a three-year period; or

20 (3) the violation of any provision of section 10-203 of the code of
21 the preceding municipality on at least two occasions within a three-year
22 period.

23 (c) Orders of the commissioner to seal premises. (1) Orders of the
24 commissioner issued pursuant to this section shall be posted at the
25 premises at which the acts described in subdivision (b) of this section
26 have occurred.

27 (2) Ten days after the date of such posting, and upon the written
28 directive of the commissioner, police officers designated in section
29 1.20 of the criminal procedure law and peace officers employed by the
30 department of finance, including but not limited to the sheriff, under-
31 sheriff and deputy sheriffs of the city of New York designated as peace
32 officers in subdivision two of section 2.10 of the criminal procedure
33 law, are authorized to act upon and enforce such orders.

34 (3) Any devices, items or goods removed pursuant to this section,
35 shall be stored in a garage, pound or other place of safety and the
36 owner or other person lawfully entitled to the possession of such
37 devices, items or goods may be charged with reasonable costs for removal
38 and storage payable prior to the release of such devices, items or goods
39 to such owner or such other person.

40 (4) The owner or other person lawfully entitled to reclaim the
41 devices, items or goods described in paragraph three of this subdivision
42 shall reclaim such devices, items or goods. If such owner or such other
43 person does not reclaim such devices, items or goods within ninety days
44 of their removal, such devices, items or goods shall be subject to
45 forfeiture upon notice and judicial determination in accordance with
46 provisions of law. Upon forfeiture the department shall, upon a public
47 notice of at least five days, sell such forfeited devices, items or
48 goods at public sale. The net proceeds of such sale, after deduction of
49 the lawful expenses incurred, shall be paid into the general fund of the
50 city.

51 (d) Unsealing of premises. The commissioner shall order that any prem-
52 ises which are sealed pursuant to this section shall be unsealed and
53 that any devices, items or goods removed, sealed or otherwise made inop-
54 erable pursuant to this section shall be released, unsealed or made
55 operable upon:

1 (1) payment of all outstanding cigarette taxes and civil penalties and
2 all reasonable costs for removal and storage; and

3 (2) the expiration of a period of time from the date of enforcement of
4 the order to be determined by the commissioner not to exceed sixty days.

5 (e) Any person aggrieved by an order issued pursuant to this section
6 may seek judicial review of such order through a proceeding pursuant to
7 article seventy-eight of the civil practice law and rules.

8 (f) Removal of seal. Any person who removes the seal on any premises
9 or removes the seal on or makes operable any devices, items or goods
10 sealed or otherwise made inoperable in accordance with an order of the
11 commissioner shall be guilty of a misdemeanor.

12 § 11-4024 Seizure and forfeiture of taxed and lawfully stamped ciga-
13 rettes sold or possessed by unlicensed retail or wholesale dealers,
14 flavored tobacco products, flavored electronic cigarettes and flavored
15 e-liquid. (a) Whenever a police officer designated in section 1.20 of
16 the criminal procedure law or a peace officer employed by the department
17 of finance, including but not limited to the sheriff, undersheriff or
18 deputy sheriffs of the city of New York designated as peace officers in
19 subdivision two of section 2.10 of the criminal procedure law, shall
20 discover (1) any cigarettes subject to any tax provided by chapter thir-
21 teen of this title, and upon which the tax has been paid and the stamps
22 affixed as required by such chapter, but such cigarettes are sold,
23 offered for sale or possessed by a person in violation of section
24 11-1303 of this code or section 17-703 or 20-202 of the code of the
25 preceding municipality, or (2) any flavored tobacco product that is
26 sold, offered for sale or possessed with intent to sell in violation of
27 section 17-715 of the code of the preceding municipality, he or she is
28 hereby authorized and empowered forthwith to seize and take possession
29 of such cigarettes or flavored tobacco product, together with any vend-
30 ing machine or receptacle in which such cigarettes or flavored tobacco
31 product are held for sale. Such cigarettes or flavored tobacco product,
32 vending machine or receptacle seized by such police officer or such
33 peace officer shall be turned over to the commissioner of finance.

34 (b) The seized cigarettes or flavored tobacco product and any vending
35 machine or receptacle seized therewith, but not the money contained in
36 such vending machine or receptacle, shall thereupon be forfeited to the
37 city, unless the person from whom the seizure is made, or the owner of
38 such seized cigarettes, flavored tobacco product, vending machine or
39 receptacle, or any other person having an interest in such property,
40 shall within ten days of such seizure, apply to the commissioner of
41 finance for a hearing to determine the propriety of the seizure, or
42 unless the commissioner of finance shall on his or her own motion
43 release the seized cigarettes, flavored tobacco product, vending machine
44 or receptacle. After such hearing the commissioner of finance shall give
45 notice of his or her decision to the petitioner. The decision of the
46 commissioner shall be reviewable for error, illegality, unconstitution-
47 ality or any other reason whatsoever by a proceeding under article
48 seventy-eight of the civil practice law and rules.

49 (c) The commissioner of finance may, within a reasonable time after
50 the forfeiture to the city of such vending machine or receptacle under
51 this section, upon publication of a notice to such effect for at least
52 five successive days, in a newspaper published or circulated in the
53 city, sell such forfeited vending machine or receptacle at public sale
54 and pay the proceeds into the general fund of the city. Such seized
55 vending machine or receptacle may be sold prior to forfeiture if the
56 owner of the seized property consents to the sale. Cigarettes or

1 flavored tobacco product forfeited to the city under this section shall
2 be destroyed or used for law enforcement purposes, except that ciga-
3 rettes that violate, or are suspected of violating, federal trademark
4 laws or import laws shall not be used for law enforcement purposes. If
5 the commissioner determines the cigarettes forfeited under this section
6 may not be used for law enforcement purposes, the commissioner of
7 finance must, within a reasonable time after the forfeiture to the city
8 of such cigarettes, upon publication of a notice to such effect for at
9 least five successive days, prior to destruction, in a newspaper
10 published or circulated in the city, destroy such forfeited cigarettes.

11 (d) In the alternative, the commissioner of finance, on reasonable
12 notice by mail or otherwise, may permit the person from whom a seizure
13 of cigarettes or flavored tobacco product under this section was made,
14 to redeem any vending machine or receptacle seized with such cigarettes
15 or flavored tobacco product, or may permit the owner of any such vending
16 machine or receptacle to redeem the same, upon the payment of any civil
17 penalty imposed pursuant to chapter seven of title seventeen or subchap-
18 ter one of chapter two of title twenty of the code of the preceding
19 municipality and the costs incurred in such proceeding.

20 (e) For purposes of this section, a flavored tobacco product means a
21 flavored tobacco product, flavored electronic cigarette or flavored
22 e-liquid.

23 § 11-4025 Seizure and forfeiture of untaxed tobacco products. (a)
24 Whenever a police officer designated in section 1.20 of the criminal
25 procedure law or a peace officer employed by the department of finance,
26 including but not limited to the sheriff, undersheriff or deputy sher-
27 iffs of the city designated as peace officers in subdivision two of
28 section 2.10 of the criminal procedure law, discovers any tobacco
29 products subject to any tax provided by chapter thirteen of this title,
30 and upon which the tax has not been paid, he or she is hereby authorized
31 and empowered forthwith to seize and take possession of such tobacco
32 products, together with any vending machine or receptacle in which such
33 tobacco products are held for sale. Such tobacco products, vending
34 machine or receptacle seized by such police officer or such peace offi-
35 cer shall be turned over to the commissioner of finance.

36 (b) The seized tobacco products and any vending machine or receptacle
37 seized therewith, but not the money contained in such vending machine or
38 receptacle, shall thereupon be forfeited to the city, unless the person
39 from whom the seizure is made, or the owner of such seized tobacco
40 products, vending machine or receptacle, or any other person having an
41 interest in such property, shall within ten days of such seizure, apply
42 to the commissioner of finance for a hearing to determine the propriety
43 of the seizure, or unless the commissioner of finance shall on his or
44 her own motion release the seized tobacco products, vending machine or
45 receptacle. After such hearing the commissioner of finance shall give
46 notice of his or her decision to the petitioner. The decision of the
47 commissioner shall be reviewable for error, illegality, unconstitution-
48 ality or any other reason whatsoever by a proceeding under article
49 seventy-eight of the civil practice law and rules.

50 (c) The commissioner of finance may, within a reasonable time after
51 the forfeiture to the city of such vending machine or receptacle under
52 this section, upon publication of a notice to such effect for at least
53 five successive days, in a newspaper published or circulated in the
54 city, sell such forfeited vending machine or receptacle at public sale
55 and pay the proceeds into the general fund of the city. Such seized
56 vending machine or receptacle may be sold prior to forfeiture if the

1 owner of the seized property consents to the sale. Tobacco products
2 forfeited to the city under this section shall be destroyed or used for
3 law enforcement purposes, except that tobacco products that violate, or
4 are suspected of violating, federal trademark laws or import laws shall
5 not be used for law enforcement purposes. If the commissioner determines
6 the tobacco products forfeited under this section may not be used for
7 law enforcement purposes, the commissioner of finance must, within a
8 reasonable time after the forfeiture to the city of such cigarettes,
9 upon publication of a notice to such effect for at least five successive
10 days, prior to destruction, in a newspaper published or circulated in
11 the city, destroy such forfeited tobacco products.

12 (d) In the alternative, the commissioner of finance, on reasonable
13 notice by mail or otherwise, may permit the person from whom a seizure
14 of tobacco products under this section was made, to redeem any vending
15 machine or receptacle seized with such tobacco products, or may permit
16 the owner of any such vending machine or receptacle to redeem the same,
17 upon the payment of any civil penalty imposed pursuant to chapter seven
18 of title seventeen or subchapter one of chapter two of title twenty of
19 the code of the preceding municipality and the costs incurred in such
20 proceeding.

21 § 11-4026 Seizure and forfeiture of taxed tobacco products sold or
22 possessed by unlicensed retail or wholesale dealers other than flavored
23 tobacco products subject to seizure under section 11-4024 of this chap-
24 ter.

25 (a) Whenever a police officer designated in section 1.20 of the crimi-
26 nal procedure law or a peace officer employed by the department of
27 finance, including but not limited to the sheriff, undersheriff or depu-
28 ty sheriffs of the city designated as peace officers in subdivision two
29 of section 2.10 of the criminal procedure law, discovers any tobacco
30 products, other than flavored tobacco products, subject to any tax
31 provided by chapter thirteen of this title, and upon which the tax has
32 been paid, but such tobacco products are sold, offered for sale or
33 possessed by a person in violation of section 11-1303 of this code or
34 section 17-703 or 20-202 of the code of the preceding municipality, he
35 or she is hereby authorized and empowered forthwith to seize and take
36 possession of such tobacco products, together with any vending machine
37 or receptacle in which such tobacco products are held for sale. Such
38 tobacco products, vending machine or receptacle seized by such police
39 officer or such peace officer shall be turned over to the commissioner
40 of finance.

41 (b) The seized tobacco products and any vending machine or receptacle
42 seized therewith, but not the money contained in such vending machine or
43 receptacle, shall thereupon be forfeited to the city, unless the person
44 from whom the seizure is made, or the owner of such seized tobacco
45 products, vending machine or receptacle, or any other person having an
46 interest in such property, shall within ten days of such seizure, apply
47 to the commissioner of finance for a hearing to determine the propriety
48 of the seizure, or unless the commissioner of finance shall on his or
49 her own motion release the seized tobacco products, vending machine or
50 receptacle. After such hearing the commissioner of finance shall give
51 notice of his or her decision to the petitioner. The decision of the
52 commissioner shall be reviewable for error, illegality, unconstitution-
53 ality or any other reason whatsoever by a proceeding under article
54 seventy-eight of the civil practice law and rules.

55 (c) The commissioner of finance may, within a reasonable time after
56 the forfeiture to the city of such vending machine or receptacle under

1 this section, upon publication of a notice to such effect for at least
2 five successive days, in a newspaper published or circulated in the
3 city, sell such forfeited vending machine or receptacle at public sale
4 and pay the proceeds into the general fund of the city. Such seized
5 vending machine or receptacle may be sold prior to forfeiture if the
6 owner of the seized property consents to the sale. Tobacco products
7 forfeited to the city under this section shall be destroyed or used for
8 law enforcement purposes, except that tobacco products that violate, or
9 are suspected of violating, federal trademark laws or import laws shall
10 not be used for law enforcement purposes. If the commissioner determines
11 the tobacco products forfeited under this section may not be used for
12 law enforcement purposes, the commissioner of finance must, within a
13 reasonable time after the forfeiture to the city of such tobacco
14 products, upon publication of a notice to such effect for at least five
15 successive days, prior to destruction, in a newspaper published or
16 circulated in the city, destroy such forfeited tobacco products.

17 (d) In the alternative, the commissioner of finance, on reasonable
18 notice by mail or otherwise, may permit the person from whom a seizure
19 of tobacco products under this section was made, to redeem any vending
20 machine or receptacle seized with such tobacco products, or may permit
21 the owner of any such vending machine or receptacle to redeem the same,
22 upon the payment of any civil penalty imposed pursuant to chapter seven
23 of title seventeen or subchapter one of chapter two of title twenty of
24 the code of the preceding municipality and the costs incurred in such
25 proceeding.

26 Title 12 - Personnel and Labor

27 § 12-101 Office of payroll administration. There shall be within the
28 comptroller's office an office of payroll administration which shall:

29 1. Support the implementation of a computerized payroll management
30 system;

31 2. Maintain the integrity and accuracy of the payroll system;

32 3. Develop uniform procedures for payroll processing and development;

33 4. Distribute and account for payroll and administer payroll
34 deductions; and

35 5. Render services to, and receive information and assistance from,
36 public corporations upon such terms and conditions as may be agreed to
37 by the office and each such corporation.

38 All city agencies shall cooperate with the office as may be necessary
39 and proper to ensure efficient operation of the payroll management
40 system.

41 § 12-102 Executive director; staff. The comptroller shall appoint an
42 executive director of payroll administration. Within the appropriations
43 therefor, the office shall employ such other officers and employees as
44 may be required to perform its duties.

45 Title 13 - Reserved

46 Title 14 - Police

47 § 14-101 Definitions. As used in this title, the following terms have
48 the following meanings:

49 1. Civil enforcement. The term "civil enforcement" means the issuance
50 of a civil summons.

51 2. Civil summons. The term "civil summons" means a civil notice of
52 violation.

1 3. Commissioner. The term "commissioner" means the commissioner of the
2 department.

3 4. Criminal enforcement. The term "criminal enforcement" means the
4 charging of a misdemeanor or violation.

5 5. Criminal summons. The term "criminal summons" means an appearance
6 ticket issued by the department pursuant to article one hundred fifty of
7 the criminal procedure law that is an accusatory instrument pursuant to
8 article one hundred of the criminal procedural law, and returnable to
9 the criminal court.

10 6. Department. The term "department" means the police department of
11 the city of New York.

12 7. Desk appearance ticket. The term "desk appearance ticket" means an
13 appearance ticket issued by the department pursuant to article one
14 hundred fifty of the criminal procedure law that is not an accusatory
15 instrument pursuant to article one hundred of the criminal procedure
16 law.

17 8. Specified unlawful act. The term "specified unlawful act" means an
18 act that violates any of the following provisions: subdivision b of
19 section 10-125 of the code of the preceding municipality, subdivision
20 one of section 16-118 of the code of the preceding municipality, subdi-
21 vision six of section 16-118 of the code of the preceding municipality
22 with respect to the act of public urination, subdivision a of section
23 24-218 of the code of the preceding municipality, section 18-146 of the
24 code of the preceding municipality, section 18-147 of the code of the
25 preceding municipality, and rules and regulations of the department of
26 parks and recreation described in paragraph nine of subdivision a of
27 section five hundred thirty-three of the charter of the preceding muni-
28 cipality.

29 § 14-102 Composition of force. Until otherwise provided by the mayor,
30 upon the recommendation of the commissioner, the police force in the
31 police department, shall consist of the following ranks of members, to
32 wit:

33 1. Captains of police, not exceeding in number one to each fifty of
34 the total number of police officers, in addition to the number detailed
35 to act as inspectors;

36 2. Lieutenants of police, not exceeding four in number to each fifty
37 of the total number of police officers;

38 3. Sergeants not exceeding six in number to each fifty police offi-
39 cers;

40 4. Surgeons of police, not exceeding forty in number, one of whom
41 shall be chief surgeon;

42 5. A veterinarian;

43 6. Police officers to the number of seven thousand eight hundred thir-
44 ty-nine.

45 § 14-103 Detective bureau. a. The commissioner shall organize and
46 maintain a bureau for detective purposes to be known as the detective
47 bureau and shall, from time to time, detail to service in said bureau as
48 many members of the force as the commissioner may deem necessary and may
49 at any time revoke any such detail.

50 b. Of the members of the force so detailed the commissioner may desig-
51 nate: (1) police officers not exceeding two hundred eighty in number,
52 as detectives of the first grade, who while performing duty in such
53 bureau and while so designated as detectives of the first grade, shall
54 be paid the same salary as lieutenants; and (2) a certain number of
55 police officers, as detectives of the second grade, who while performing
56 duty in such bureau and while so designated as detectives of the second

1 grade, shall be paid the same salary as sergeants; and a certain number
2 of police officers as detectives of the third grade, who while perform-
3 ing duty in such bureau and while so designated as detectives of the
4 third grade shall be paid such salary as may be determined by the mayor.
5 Any person who has received permanent appointment as a police officer
6 and is temporarily assigned to perform the duties of a detective shall,
7 whenever such assignment exceeds eighteen months in duration, be
8 appointed as a detective and receive the compensation ordinarily paid to
9 a detective performing such duties.

10 c. The commissioner may designate lieutenants as commanders of detec-
11 tive squads, and sergeants as supervisors of detective squads, who while
12 performing duty in such bureau and while so designated as commanders of
13 detective squads or supervisors of detective squads shall be paid such
14 salary as may be determined by the mayor.

15 d. Any member of the force detailed to such bureau while so detailed
16 shall retain his or her rank in the force and shall be eligible for
17 promotion the same as if serving in the uniformed force, and the time
18 during which he or she serves in such bureau shall count for all
19 purposes as if served in his or her rank or grade in the uniformed
20 force.

21 e. The commissioner may at his or her pleasure revoke any designation
22 made pursuant to the provision of this section after complying with the
23 provisions of section seventy-five of the civil service law.

24 § 14-104 Juvenile bureau. a. There shall be a bureau in the department
25 organized and maintained for the prevention of crime and delinquency
26 among minors and for the performance of such other duties as the commis-
27 sioner may assign thereto.

28 b. Any member of the force assigned to such juvenile bureau shall
29 retain his or her rank and pay in the force and shall be eligible for
30 promotion as if serving in the uniformed force and the time served in
31 such bureau shall count for all purposes as if served in his or her rank
32 or grade in the uniformed force of the department.

33 § 14-105 Bureau of taxis, limousines and liveries. The purpose of the
34 bureau of taxis, limousines and liveries shall be the continuance,
35 further development and improvement of taxi, limousine and livery
36 service in the city of Staten Island.

37 It shall be the further purpose of the bureau, consonant with the
38 promotion and protection of the public comfort and convenience to adopt
39 and establish an overall public transportation policy governing taxi,
40 coach, limousine and wheelchair accessible van services as it relates to
41 the overall public transportation network of the city; to require the
42 filing of rates, standards of service, standards of insurance and mini-
43 mum coverage; standards for driver safety; standards for equipment safe-
44 ty and design; standards for noise and air pollution control; and to set
45 standards and criteria for the licensing of vehicles, drivers and chauff-
46 feurs, owners and operators engaged in such services.

47 § 14-106 Jurisdiction, powers and duties of the bureau. 1. The juris-
48 diction, powers and duties of the bureau shall include the regulation
49 and supervision of the business and industry of transportation of
50 persons by licensed vehicles for hire in the city.

51 2. Such regulations and supervision shall extend to:

52 (a) The supervision of rates to be charged and collected.

53 (b) The regulation and supervision of standards and conditions of
54 service.

55 (c) The revocation and suspension of licenses for vehicles, other than
56 licenses issued pursuant to state law, provided, however, that taxicab

1 licenses represented by medallions heretofore issued shall in all
2 respects remain valid in accordance with their terms and transferable
3 according to law.

4 3. The bureau or an administrative tribunal which may be established
5 by the police commissioner to adjudicate charges of violations of
6 provisions of the administrative code, rules and regulations promulgated
7 thereunder and public complaints of discrimination or overcharging,
8 shall have the power to enforce its decisions and orders imposing civil
9 penalties, not to exceed ten thousand dollars for each respondent, for
10 violations relating to unlicensed vehicles for hire and unlicensed driv-
11 ers of vehicles for hire and for violations relating to the operation of
12 commuter van services without authorization and the operation of unli-
13 censed commuter vans and unlicensed drivers of commuter vans pursuant to
14 provisions of the administrative code.

15 Before a judgment based upon a default may be so entered the bureau or
16 administrative tribunal shall have first notified the respondent by
17 first class mail in such form as the bureau may direct (a) of the
18 default and order and the penalty imposed; (b) that a judgment will be
19 entered in the civil court of the city; and (c) that entry of such judg-
20 ment may be avoided by requesting a stay of default for good cause and
21 either requesting a hearing or entering a plea pursuant to the rules of
22 the bureau or administrative tribunal within thirty days of the mailing
23 of such notice.

24 Title 15 - Fire Prevention and Control

25 § 15-101 Definitions; bureaus, divisions and offices. 1. For the
26 purposes of this title the following terms shall have the following
27 meanings:

28 (a) "Commissioner" shall mean the fire commissioner.

29 (b) "Department" shall mean the fire department.

30 2. In addition to such other bureaus, divisions and offices as the
31 commissioner may organize pursuant to section eleven hundred two of the
32 charter of the preceding municipality, there shall be in the department:

33 (a) A fire bureau in the charge of the chief of the department which
34 shall have charge of the extinguishment of fires and the necessary and
35 incidental protection of life and property in connection therewith.

36 In such bureau there shall be a bureau of fire prevention and such
37 bureau shall be in the charge of a member of the uniformed force of the
38 department, of a rank above that of captain, to be designated by the
39 commissioner. Such bureau shall perform the duties and exercise the
40 powers of the commissioner in relation to (1) combustibles, chemicals,
41 explosives, flammables, or other dangerous substances, articles,
42 compounds or mixtures, (2) the prevention of fires or danger to life or
43 property therefrom, excluding provisions relating to structural condi-
44 tions and (3) protection against fire and panic, obstruction of aisles,
45 passageways and means of egress, standees, fire protection and fire
46 extinguishing appliances, and fire prevention in licensed places of
47 assembly. In the performance of their official duties, the uniformed and
48 civilian members of the bureau of fire prevention shall have the powers
49 and perform the duties of peace officers, but their power to make
50 arrests and serve process in criminal actions shall be restricted to
51 cases arising under laws relating to (1) the manufacture, storage, sale,
52 transportation or use of combustibles, chemicals, explosives, flammables
53 or other dangerous substances, articles, compounds or mixtures and the
54 control of fire hazards, (2) the prevention of fires or danger to life

1 or property therefrom, excluding provisions relating to structural
2 conditions and (3) fire perils.

3 (b) A chief and deputy chief fire marshal, appointed by the commis-
4 sioner, who shall be members of the department.

5 3. Notwithstanding any inconsistent provision of any general, special
6 or local law, or rule or regulation, a chief of the department shall not
7 serve in any other capacity to the department during his or her term of
8 office of chief. Any person violating the provisions of this section
9 shall be deemed to have vacated the office of chief so held.

10 § 15-102 Commissioner. The head of the fire department shall be the
11 commissioner. The mayor may designate the chief of the fire department
12 to serve as commissioner, and shall exercise the powers and duties of
13 commissioner and shall receive the salary of the commissioner. While
14 serving as commissioner, the chief shall forfeit none of his or her
15 pension rights and privileges as chief or his or her civil service
16 status.

17 The commissioner may appoint deputies, one of whom may perform all the
18 duties and exercise all the powers of the commissioner except appoint-
19 ment or promotion, detail or dismissal of any member of the uniformed
20 force when authorized by instrument in writing to be filed in the
21 offices of the mayor and the comptroller.

22 The commissioner shall be the treasurer of the department and shall
23 file in the office of the comptroller a bond for the faithful perform-
24 ance of his or her duties as treasurer.

25 § 15-103 Powers. The commissioner shall have sole and exclusive power
26 and perform all duties for the government, discipline, management, main-
27 tenance and direction of the fire department and the premises and prop-
28 erty, however the commissioner shall provide written notice with
29 supporting documentation at least forty-five days prior to the permanent
30 closing of any firehouse or permanent removal or relocation of any fire
31 fighting unit to the council members whose districts are served by such
32 facility and to the clerk of the council. The term "permanent" shall
33 mean a time period in excess of six months.

34 The department shall have the sole and exclusive power and authority
35 to extinguish fires at any place within the jurisdiction of the city and
36 still have power and authority to extinguish fires upon any vessel in
37 the port of New York or upon any dock, wharf, pier, warehouse or other
38 structure bordering or adjacent to such port.

39 The commissioner shall have sole and exclusive jurisdiction over the
40 approval of the installation of all containers for combustibles, chemi-
41 cals, explosives, inflammable or other dangerous substances, except
42 storage tanks for oilburning equipment.

43 The commissioner shall have the sole and exclusive power to designate
44 and fix the location of all fire alarm telegraph, signal and alarm
45 stations in the city and to control the same for the purpose of the
46 department; except the commissioner shall give forty-five days notice to
47 council members whose districts are served by such equipment and to the
48 city clerk in the case of removal.

49 § 15-104 Enforcement of fire laws. 1. The commissioner shall have the
50 power and it shall be his or her duty to enforce all laws and the rules
51 and regulations with respect to:

52 (a) the manufacture, storage, sale, transportation or use of combusti-
53 bles, chemicals or dangerous substances;

54 (b) investigation of the cause and origin of fires and suppression of
55 arson; and

56 (c) the prevention of fires or danger to life or property.

1 2. The commissioner shall have the power to cause any building, struc-
2 ture, tunnel, vessel or premises to be inspected for fire hazards by an
3 officer or employee of the department; and to inspect and test any auto-
4 matic or other fire alarm system or fire extinguishing equipment.

5 3. The commissioner shall have the power and it shall be his or her
6 duty to order in writing the remedying of any condition in violation of
7 any regulation which he or she is empowered to enforce. The commissioner
8 may take proceedings for the enforcement of any order of the commission-
9 er which is not complied with within the time fixed in the order for
10 such compliance to be enforced. Every order, requirement, decision or
11 determination of the commissioner shall be in writing.

12 4. The commissioner and his or her deputies and such other officers or
13 employees of the department as are authorized by the commissioner may
14 without fee or hindrance enter and inspect all buildings, premises,
15 vessels, structures and all underground passages of every sort in the
16 city or in the port of New York for compliance with provisions of law or
17 rules and regulations enforced by the department. Any refusal to permit
18 such entry or inspection shall be triable by a judge and punishable by
19 not more than thirty days imprisonment or by a fine of not more than
20 fifty dollars, or both.

21 § 15-105 Other officer. No member of the uniformed force of the fire
22 department shall accept any additional place of public trust or civil
23 emolument.

24 The chief of the fire department shall not serve in any other capacity
25 to the department during his or her term of office or shall be deemed to
26 have vacated the office of chief.

27 Title 16 - Sanitation

28 Chapter 1

29 GENERAL

30 § 16-101 Definitions. When used in this title the following terms
31 shall have the following meanings:

32 1. "Department" shall mean the department of sanitation.

33 2. "Commissioner" shall mean the commissioner of sanitation.

34 3. "Street" includes street, avenue, road, alley, lane, highway,
35 boulevard, concourse, driveway, culvert and crosswalk, and every class
36 of road, square and place, and all parkways and through vehicular park
37 drives except a road within any park or a wharf, pier, bulkhead, or slip
38 by law committed to the custody, and control of the department of ports
39 and terminals.

40 § 16-102 Commissioner. The head of the sanitation department shall be
41 the commissioner.

42 § 16-103 Powers and duties of the commissioner. 1. The commissioner
43 shall have charge and control of and be responsible for all those func-
44 tions and operations of the city relating to the cleanliness of the
45 streets and the disposal of waste, including, without limitation, the
46 following:

47 (a) the sweeping, cleaning, sprinkling, flushing, washing and sanding
48 of the streets;

49 (b) the removal and disposition of ashes, street sweepings, garbage,
50 refuse, rubbish and waste;

51 (c) the removal of ice and snow from the streets;

52 (d) the removal of encumbrances from the streets and the storage or
53 disposal of such encumbrances, except that the mayor may provide by
54 regulation that the removal and storage of household effects or other

1 chattels shall be a responsibility of the department of general services
2 and contracting;

3 (e) plans, design, construction, operation, repair, maintenance,
4 enlargement and regulation of the use of incinerators, landfills and
5 other plants, facilities and equipment; and

6 (f) recovery and reuse of recyclable material.

7 2. The commissioner may adopt regulations specifying the kind of
8 ashes, garbage, refuse, rubbish or other material or substance that will
9 be collected by the city, the time when it will be collected and the
10 place at which it shall be deposited for collection.

11 3. The regulations shall be enforced by order of the commissioner.
12 Such order shall be addressed to the owner or owners, lessees or occu-
13 pants of the building, structure, enclosure, vessel, place or premises
14 affected thereby. It shall not be necessary to designate such owner or
15 owners, lessees or occupants by name, however the premises shall be
16 designated in the address so that it may be readily identified.

17 § 16-104 Duties and obligations of property owner. The owner of any
18 property shall keep any vacant lot or lots in a clean and sanitary
19 manner and free of debris and other litter at the owner's expense. In
20 the event that an owner of property fails to comply with these
21 provisions, or rules and regulations, the department may provide for
22 cleaning of a vacant lot at the expense of the property owner.

23 Chapter 2

24 SOLID WASTE RECYCLING

25 § 16-301 Short title. Sections 16-301 through 16-324 of this title
26 shall be known and may be cited as the "City of Staten Island Recycling
27 Law".

28 § 16-302 Declaration of policy. It is hereby declared to be the public
29 policy of the city to reduce environmental pollution and dangers to
30 health, to decrease the demand for scarce landfill space, to minimize
31 the size and cost of the proposed resource recovery program, and to
32 encourage the conservation of valuable natural resources and energy. It
33 is the policy of the city to promote the recovery of materials from the
34 city of Staten Island solid waste stream for the purpose of recycling
35 such materials and returning them to the economy. This title shall be
36 liberally construed in order to effectuate the purposes set forth in
37 this section.

38 § 16-303 Definitions. When used in this title:

39 1. "Architectural paint" means interior and exterior architectural
40 coatings, including paints and stains purchased for commercial or resi-
41 dential use, but does not include architectural coatings purchased for
42 industrial use or for use in the manufacture of products.

43 2. "Organic waste" means any material found in the waste stream that
44 can be broken down into, or otherwise become part of, usable compost,
45 such as food scraps, soiled paper, and plant trimmings. As determined by
46 the commissioner, such term may also include disposable plastic food
47 service ware and bags that meet the ASTM International standard specifi-
48 cations for compostable plastics, but shall not include liquids and
49 textiles.

50 3. "Department-managed solid waste" means all solid waste that the
51 department and its contractors collect, all solid waste that the depart-
52 ment receives for free disposal, all solid waste collected for recycling
53 or reuse through special events or programs promoted, operated or funded
54 by the department, and all solid waste diverted from collection by the

1 department that is accepted through non-department infrastructure for
2 recycling or reuse and counted towards the department's recycling goals
3 as set forth in subdivision a of section 16-305 of this chapter.

4 4. "Household" means a single dwelling or a residential unit within a
5 multiple dwelling, hotel, motel, campsite, ranger station, public or
6 private recreation area, or other residence.

7 5. "Household and institutional compostable waste" means any composta-
8 ble waste, excluding yard waste, in or otherwise destined for any waste
9 stream collected by the department.

10 6. "Household hazardous waste" means:

11 a. any household waste that is ignitable, corrosive, reactive or toxic
12 and that, but for its point of generation, would be a hazardous waste
13 under part three hundred seventy-one of title six of the New York code,
14 rules and regulations, as may be amended from time to time, and includes
15 all pesticides, as defined in article thirty-three of the environmental
16 conservation law, and hazardous waste, as defined in section 27-0901 of
17 the environmental conservation law, as such laws may be amended from
18 time to time; and

19 b. any other household waste that the commissioner determines, by
20 rule, to be hazardous and require special handling.

21 7. "Post-collection separation" means the dividing of solid waste into
22 some or all of its component parts after the point of collection.

23 8. "Post-consumer material" means those products generated by a busi-
24 ness or a consumer which have served their intended end uses, and which
25 have been separated or diverted from solid waste for the purposes of
26 collection, recycling and disposition.

27 9. "Private carter" means any person required to be licensed or
28 permitted pursuant to chapter one of title sixteen-A of the code of the
29 preceding municipality.

30 10. "Publicly accessible textile drop-off bin" means any enclosed
31 container that allows for members of the public to deposit textiles into
32 such container for reuse or recycling in accordance with the textile
33 reuse and recycling program established by section 16-310.1 of this
34 chapter.

35 11. "Recyclable materials" means solid waste that may be separated,
36 collected, processed, marketed and returned to the economy in the form
37 of raw paper, plastic, yard waste and any other solid waste required to
38 be recycled or composted pursuant to this chapter, solid waste collected
39 for recycling or reuse through special events or programs promoted,
40 operated or funded by the department, and solid waste accepted through
41 non-department infrastructure for recycling or reuse.

42 12. "Recycled" or "recycling" means any process by which recyclable
43 materials are separated, collected, processed, marketed and returned to
44 the economy in the form of raw materials or products.

45 13. "Recycling center" means any facility operated to facilitate the
46 separation, collection, processing or marketing of recyclable materials
47 for reuse or sale.

48 14. "Recycling district" means any borough or smaller geographic area
49 the commissioner deems appropriate for the purpose of implementing this
50 chapter.

51 15. "Rigid plastic container" means any plastic container having a
52 semi-flexible or inflexible finite shape or form that is capable of
53 maintaining its shape while holding other products and is designed to
54 hold food, beverages, and consumer household products, including, but
55 not limited to, the following types of containers: plastic bottles,
56 plastic jugs, plastic tubs, plastic trays, plastic cups, plastic buck-

1 ets, plastic crates and plastic flower pots, and any other rigid plastic
2 material that the commissioner may designate by rule, but not including
3 containers made of polystyrene foam.

4 16. "Solid waste" means all putrescible and non-putrescible materials
5 or substances, except as described in paragraph c of this subdivision,
6 that are discarded or rejected as being spent, useless, worthless or in
7 excess to the owners at the time of such discard or rejection, including
8 but not limited to, garbage, refuse, industrial and commercial waste,
9 rubbish, tires, ashes, contained gaseous material, incinerator residue,
10 construction and demolition debris, discarded automobiles and offal.

11 a. A material is discarded if it is abandoned by being:

12 i. disposed of;

13 ii. burned or incinerated, including being burned as a fuel for the
14 purpose of recovering useable energy; or

15 iii. accumulated, stored, or physically, chemically or biologically
16 treated, other than burned or incinerated, instead of or before being
17 disposed of.

18 b. A material is disposed of if it is discharged, deposited, injected,
19 dumped, spilled, leaked, or placed into or on any land or water so that
20 such material or any constituent thereof may enter the environment or be
21 emitted into the air or discharged into groundwater or surface water.

22 c. The following are not solid waste for the purpose of this chapter:

23 i. domestic sewage;

24 ii. any mixture of domestic sewage and other wastes that passes
25 through a sewer system to a publicly owned treatment works for treat-
26 ment, except (A) any material that is introduced into such system in
27 order to avoid the provisions of this chapter or the state regulations
28 promulgated to regulate solid waste management facilities pursuant to 6
29 NYCRR part 360 or (B) food waste;

30 iii. industrial wastewater discharges that are actual point source
31 discharges subject to permits under article seventeen of the environ-
32 mental conservation law; industrial wastewaters while they are being
33 collected, stored, or treated before discharge and sludges that are
34 generated by industrial wastewater treatment are solid wastes;

35 iv. irrigation return flows;

36 v. radioactive materials that are source, special nuclear, or by-pro-
37 duct material as defined by the Atomic Energy Act of 1954, as amended,
38 42 U.S.C. § 2011 et seq.;

39 vi. materials subject to in-situ mining techniques which are not
40 removed from the ground as part of the extraction process;

41 vii. hazardous waste as defined in section 27-0901 of the environ-
42 mental conservation law; and

43 viii. regulated medical waste or other medical waste as described in
44 section 16-120.1 of this title.

45 17. "Source separation" means the dividing of solid waste into some or
46 all of its component parts at the point of generation.

47 18. "Yard waste" means leaves, grass clippings, garden debris, and
48 vegetative residue that is recognizable as part of a plant or vegetable,
49 small or chipped branches, and similar material.

50 Chapter 3

51 CITYWIDE RECYCLING PROGRAM

52 § 16-305 Recycling of department-managed solid waste. 1. a. The
53 following recycling percentage goals are established for the recycling
54 of department-managed solid waste:

- 1 i. by July first, two thousand eleven, sixteen percent of department-
- 2 managed solid waste;
- 3 ii. by July first, two thousand thirteen, nineteen percent of depart-
- 4 ment-managed solid waste;
- 5 iii. by July first, two thousand fourteen, twenty-one percent of
- 6 department-managed solid waste;
- 7 iv. by July first, two thousand sixteen, twenty-four percent of
- 8 department-managed solid waste;
- 9 v. by July first, two thousand eighteen, twenty-seven percent of
- 10 department-managed solid waste;
- 11 vi. by July first, two thousand nineteen, thirty percent of depart-
- 12 ment-managed solid waste; and
- 13 vii. by July first, two thousand twenty, thirty-three percent of
- 14 department-managed solid waste.
- 15 b. In addition, the following recycling goals are established for
- 16 curbside and containerized waste collected by the department:
- 17 i. By July first, two thousand eleven, sixteen percent of curbside and
- 18 containerized waste collected by the department;
- 19 ii. By July first, two thousand thirteen, eighteen percent of curbside
- 20 and containerized waste collected by the department;
- 21 iii. By July first, two thousand fourteen, nineteen percent of curb-
- 22 side and containerized waste collected by the department;
- 23 iv. By July first, two thousand sixteen, twenty-one percent of curb-
- 24 side and containerized waste collected by the department;
- 25 v. By July first, two thousand eighteen, twenty-three percent of curb-
- 26 side and containerized waste collected by the department;
- 27 vi. By July first, two thousand nineteen, twenty-four percent of curb-
- 28 side and containerized waste collected by the department; and
- 29 vii. By July first, two thousand twenty, twenty-five percent of curb-
- 30 side and containerized waste collected by the department.
- 31 2. The commissioner shall adopt and implement rules designating at
- 32 least six recyclable materials, including plastics to the extent
- 33 required in subdivision three of this section and yard waste to the
- 34 extent required in section 16-308 of this chapter and organic waste to
- 35 the extent required in section 16-308.1 of this chapter, contained in
- 36 department-managed solid waste and requiring households to source sepa-
- 37 rate such designated materials.
- 38 3. a. Prior to commencing delivery of department-managed recyclable
- 39 materials to the designated recycling processing facility at the South
- 40 Brooklyn Marine Terminal, the commissioner shall designate as recyclable
- 41 materials, and require the source separation of, rigid plastic contain-
- 42 ers.
- 43 b. If the commissioner, in his or her discretion, determines that the
- 44 cost to the city of recycling rigid plastic containers required to be
- 45 designated as recyclable materials pursuant to paragraph a of this
- 46 subdivision is not reasonable in comparison with the cost of recycling
- 47 only metal, glass and plastic and have been designated as recyclable
- 48 materials, the commissioner shall within ten business days notify and
- 49 provide documentation to the council of the factors relied upon to make
- 50 such determination and shall not be required to designate any such rigid
- 51 plastic containers as recyclable materials.
- 52 c. If the commissioner determines that the cost to the city of recycl-
- 53 ing rigid plastic containers is not reasonable in comparison with the
- 54 cost of recycling only metal, glass and plastic that have been desig-
- 55 nated as recyclable materials, the commissioner shall annually reevalua-
- 56 te the cost to the city of designating such rigid plastic containers as

1 recyclable materials, and shall annually make a new determination as to
2 whether the cost of designating such containers as recyclable materials
3 is reasonable in comparison with the cost of recycling only metal, glass
4 and plastic that have been designated as recyclable materials and shall
5 report such evaluations to the council. The department shall not
6 promulgate rules designating rigid plastic containers as recyclable
7 materials, and need not conduct outreach or education relating thereto
8 if, pursuant to paragraph b of this subdivision, the commissioner deter-
9 mines that the cost to the city of recycling rigid plastic containers is
10 not reasonable in comparison with the cost of recycling only metal,
11 glass and plastic that have been designated as recyclable materials.

12 d. Immediately following the promulgation of rules designating rigid
13 plastic containers as recyclable materials, the department shall under-
14 take outreach and education, in cooperation with any other agency or
15 entity designated for that purpose by the commissioner, to inform resi-
16 dents of such new designation and to provide instruction on compliance
17 with the requirements of this subdivision and the rules promulgated
18 pursuant thereto.

19 4. The commissioner shall adopt and implement rules establishing
20 procedures requiring the placement of the designated materials at the
21 curbside, in specialized containers, or in any other manner the commis-
22 sioner determines, to facilitate the collection of such materials in a
23 manner that enables them to be recycled. Under such rules, no person
24 shall be liable for incorrectly placing a non-designated rigid plastic
25 container in the recycling stream.

26 5. Where the department provides solid waste collection services to a
27 building containing at least four and no more than eight dwelling units,
28 the commissioner shall adopt and implement rules requiring the owner,
29 net lessee or person in charge of such building to:

30 a. provide for the residents, where practicable, a designated area
31 and, where appropriate, containers in which to store the source sepa-
32 rated or other designated recyclable materials to be collected by the
33 department; and

34 b. inform all residents of the requirements of this chapter and the
35 rules promulgated pursuant thereto by, at a minimum, posting
36 instructions on source separation in or near the designated recycling
37 area and making available to each resident at the inception of a lease,
38 where applicable, a department-issued guide to recycling, which shall be
39 made available to the owner, net lessee or person in charge of such
40 building by the department pursuant to section 16-315 of this chapter in
41 print form or on the department's website, or in an alternative guide
42 containing similar information to the guide required by section 16-315
43 of this chapter.

44 If reasonably accessible space for the storage of source separated or
45 other designated recyclable materials is not available in such building,
46 and such space is available behind the building's property line, such
47 space behind the property line may be designated as the area for the
48 storage of source separated or other designated recyclable materials. If
49 no such space is available, the owner, net lessee or person in charge of
50 such building shall post instructions on recycling and source separation
51 in or near a designated area that is visible to all residents in the
52 building.

53 With respect to solid waste generated by households in the aforesaid
54 buildings, the obligations of an owner, net lessee or person in charge
55 of such building under this chapter shall be limited to those set forth

1 in this subdivision and subdivisions four and seven of this section or
2 rules promulgated pursuant to such subdivisions.

3 6. Where the department provides solid waste collection services to a
4 building containing nine or more dwelling units, the commissioner shall
5 adopt and implement rules requiring the owner, net lessee or person in
6 charge of such building to:

7 a. provide for the residents a designated area and, where appropriate,
8 containers in which to store the source separated or other designated
9 recyclable materials to be collected by the department;

10 b. inform all residents of the requirements of this chapter and the
11 rules promulgated pursuant thereto by, at a minimum, posting
12 instructions on source separation in or near the designated recycling
13 area, and making available to each resident at the inception of a lease,
14 a department-issued guide to recycling, which shall be made available to
15 the owner, net lessee or person in charge of such building by the
16 department pursuant to section 16-315 of this chapter in print form or
17 on the department's website, or in an alternative guide containing simi-
18 lar information to the guide required by section 16-315 of this chapter;
19 and

20 c. remove non-designated materials from the containers of designated
21 source separated recyclable materials before such containers are placed
22 at the curbside for collection and ensure that the designated materials
23 are placed at the curbside in the manner prescribed by the department.

24 With respect to solid waste generated by households in the aforesaid
25 buildings, the obligations of an owner, net lessee or person in charge
26 of such building under this chapter shall be limited to those set forth
27 in this subdivision and subdivisions four and seven of this section or
28 rules promulgated pursuant to such subdivisions.

29 7. The commissioner shall adopt and implement rules for any building
30 containing four or more dwelling units in which the amount of designated
31 materials placed out for collection is significantly less than what can
32 reasonably be expected from such building. These rules shall require
33 residential generators, including tenants, owners, net lessees or
34 persons in charge of such building to use transparent bags or such other
35 means of disposal the commissioner deems appropriate to dispose of solid
36 waste other than the designated recyclable materials. Upon request of
37 the owner, net lessee or person in charge of such building, and if the
38 commissioner determines that such owner, net lessee or person in charge
39 of such building has complied with this subdivision, subdivision four of
40 this section and, as applicable, subdivision five or subdivision six of
41 this section or rules promulgated pursuant to such subdivisions and that
42 the amount of designated materials placed out for collection remains
43 significantly less than what can reasonably be expected from such build-
44 ing, the department may develop a schedule to conduct random inspections
45 to facilitate compliance with the provisions of this chapter by tenants
46 of such building, provided that lawful inspections may occur at reason-
47 able times without notice to ensure compliance by the tenants, owner,
48 net lessee or person in charge of such building.

49 8. a. In calculating the extent to which the department has met the
50 recycling percentage goals set forth in paragraph a of subdivision one
51 of this section, the department shall include in its calculations all
52 curbside and institutional recycling it collects, including materials
53 collected from households, schools, not-for-profit institutions and city
54 agencies, and all recyclable materials collected as part of the public
55 space recycling program pursuant to section 16-310 of this chapter, and
56 may include yard waste collected pursuant to section 16-308 of this

1 chapter and any other material collected for composting pursuant to this
2 chapter, Christmas trees collected pursuant to section 16-309 of this
3 chapter, clothing and textiles donated or collected pursuant to section
4 16-310.1 of this chapter, household hazardous waste diverted pursuant to
5 section 16-310.3 of this chapter, rechargeable batteries collected
6 pursuant to chapter four of title eleven of the code of the preceding
7 municipality, beverage containers returned within the city pursuant to
8 title ten of article twenty-seven of the environmental conservation law,
9 electronic waste collected within the city or otherwise diverted from
10 the city's waste stream, including such waste collected or diverted
11 pursuant to title twenty-six of article twenty-seven of the environ-
12 mental conservation law, and plastic bags collected within the city or
13 otherwise diverted from the city's waste stream, including such plastic
14 bags collected or diverted pursuant to title twenty-seven of article
15 twenty-seven of the environmental conservation law. Only recyclable
16 materials specifically enumerated in this paragraph shall be counted for
17 purposes of calculating the extent to which the department has met the
18 recycling percentage goals set forth in paragraph a of subdivision one
19 of this section.

20 b. In calculating the extent to which the department has met the recy-
21 cling percentage goals set forth in paragraph b of subdivision one of
22 this section, the department shall include in its calculations all curb-
23 side and institutional recycling it collects, including materials
24 collected from households, schools, not-for-profit institutions and city
25 agencies, and all recyclable materials collected as part of the public
26 space recycling program pursuant to section 16-310 of this chapter.

27 c. In calculating the extent to which the department has met the recy-
28 cling percentage goals set forth in paragraphs a and b of subdivision
29 one of this section, the department shall not include recycling of aban-
30 doned vehicles or recycling from lot cleaning operations, asphalt and
31 mill tailings, construction and demolition debris or other commercial
32 recycling programs. The commissioner shall not designate any such mate-
33 rials as recyclable materials under this section for purposes of calcu-
34 lating the extent to which the department has met such recycling
35 percentage goals.

36 d. In calculating the percent of the department-managed solid waste
37 stream recycled in connection with the percentage goals set forth in
38 paragraph a of subdivision one of this section, the department shall
39 ensure that any quantity of material counted as recycled must be fully
40 included in the calculation of the city's total department-managed solid
41 waste stream.

42 e. All data used to make calculations pursuant to paragraphs a and b
43 of this subdivision shall be made available on the department's website
44 in raw form disaggregated by material type and using a non-proprietary
45 format on a monthly basis, or, if such data is not generated by the
46 department, within one month from the date that the department receives
47 reports of such information.

48 9. In the event that the department does not meet any recycling
49 percentage goal set forth in paragraphs a or b of subdivision one of
50 this section by the dates specified therein, the department shall, with-
51 in sixty days of the date for meeting such goal, expand recycling
52 outreach and education and shall take such other appropriate measures
53 including, but not limited to, directing such outreach and education to
54 the neighborhoods and community districts in which recycling diversion
55 rates fall below the median city recycling diversion rate and consulting
56 with the council to explore additional measures to meet the recycling

1 percentage goals set forth in such subdivision. In expanding recycling
2 outreach and education, the department may work with other agencies or
3 entities designated for that purpose by the commissioner.

4 10. In the event that the department is unable to achieve two consec-
5 utive recycling percentage goals set forth in paragraphs a and b of
6 subdivision one of this section by the dates specified therein, in addi-
7 tion to the requirements of subdivision nine of this section, the
8 commissioner shall retain a special advisor, who shall be selected by
9 the mayor and the speaker, provided that the commissioner need not
10 retain such special advisor more than once every three years. Within one
11 hundred twenty days of such retention, such adviser shall submit a
12 report to the mayor and council recommending additional measures that
13 may be taken by the city following such report in order to meet such
14 recycling percentage goals.

15 § 16-305.1 Weekly collection of designated recyclable materials. 1.
16 Weekly collection of designated recyclable materials shall be maintained
17 in all local service delivery districts.

18 2. Effective July first, two thousand nine, and notwithstanding any
19 inconsistent provision of this chapter, the department shall be author-
20 ized, by written order of the commissioner, to implement and maintain
21 alternate week collection of designated recyclable materials in all
22 local service delivery districts, provided that the department may, by
23 written order of the commissioner, provide for more frequent collection
24 of designated recyclable materials in designated local service delivery
25 districts. Any such written order of the commissioner implementing
26 alternate week collection shall expire no later than March thirty-first,
27 two thousand ten.

28 3. For purposes of this section "designated recyclable materials"
29 shall mean solid waste that has been designated by the commissioner as
30 recyclable pursuant to section 16-305, section 16-307, or section
31 16-308.1 of this chapter.

32 4. Nothing in this section shall be construed to require collection of
33 designated recyclable materials in such parts of the city or during such
34 times of the year that such materials are not otherwise collected.

35 § 16-306 Private carter-collected waste. 1. The commissioner shall
36 adopt and implement rules designating recyclable materials that consti-
37 tute in the aggregate at least one-half of all solid waste collected by
38 private carters, and additional materials if the commissioner determines
39 that economic markets exist for them. Pursuant to subdivision two of
40 this section, such rules shall require generators of private carter-col-
41 lected waste to source separate some or all of the designated materials
42 and to arrange for lawful collection for recycling, reuse or sale for
43 reuse by private carters or persons other than private carters of such
44 source separated materials. With regard to designated materials that are
45 not required by such rules to be source separated, generators of private
46 carter-collected waste may source separate these designated materials
47 and, in any event, shall arrange for their lawful collection for recycl-
48 ing, reuse or sale for reuse by private carters or persons other than
49 private carters. If a generator of private carter-collected waste has
50 source separated the designated materials in accordance with the rules
51 and arranged for the lawful collection for recycling, reuse or sale for
52 reuse by private carters or persons other than private carters of such
53 source separated materials and, with regard to designated materials that
54 are not required by such rules to be source separated, arranged for
55 lawful collection for recycling, reuse or sale for reuse by private
56 carters or persons other than private carters, such arrangement shall

1 constitute an affirmative defense to any proceeding brought against the
2 generator pursuant to section 16-324 of this title.

3 2. (a) The rules promulgated pursuant to subdivision one of this
4 section shall require that generators of waste collected by businesses
5 required to be licensed pursuant to section 16-505 of the code of the
6 preceding municipality source separate the designated materials in such
7 manner and to such extent as the commissioner determines to be necessary
8 to minimize contamination and maximize the marketability of such materi-
9 als. However, in promulgating such rules the commissioner shall not
10 require source separation of a material unless the commissioner has
11 determined that an economic market exists for such material. For the
12 purpose of this section, the term "economic market" refers to instances
13 in which the full avoided costs of proper collection, transportation and
14 disposal of source separated materials are equal to or greater than the
15 cost of collection, transportation and sale of said materials less the
16 amount received from the sale of said materials.

17 (b) (i) Any designated carter that collects source separated desig-
18 nated materials in a commercial waste zone pursuant to section 16-1002
19 of the code of the preceding municipality shall provide for the
20 collection of, and ensure the continued separation of, designated mate-
21 rials that have been source separated, provide for the separation of all
22 other designated materials, and provide for recycling of all the desig-
23 nated materials in accordance with the rules of the department and the
24 terms of any agreement entered into pursuant to section 16-1002 of the
25 code of the preceding municipality under which such designated carter is
26 providing such service.

27 (ii) Any person registered by the business integrity commission to
28 remove, collect, or dispose of trade waste generated in the course of
29 operation of such person's business pursuant to subdivision b of section
30 16-505 of the code of the preceding municipality shall provide for the
31 collection of, and ensure the continued separation of, designated mate-
32 rials that have been source separated, provide for the separation of all
33 other designated materials, and provide for recycling of all the desig-
34 nated materials in accordance with the rules promulgated by the business
35 integrity commission pursuant to this section and subject to the penal-
36 ties provided in subdivision a of section 16-515 of the code of the
37 preceding municipality.

38 (c) The commissioner and the chair of the business integrity commis-
39 sion shall have the authority to issue notices of violation for any
40 violation of any rules promulgated pursuant to this section and such
41 notices of violation shall be returnable in a civil action brought in
42 the name of the commissioner or the chair of the business integrity
43 commission before the environmental control board which shall impose a
44 penalty not to exceed ten thousand dollars for each such violation.

45 3. The department shall complete a study of commercial recycling in
46 the city no later than January first, two thousand twelve. Such commer-
47 cial recycling study shall focus on the putrescible portion of the
48 commercial waste stream, and shall include, but need not be limited to,
49 the following: (a) an integration of all data on commercial waste in the
50 city collected and transported through transfer stations and recycling
51 processors; (b) an assessment of current practices, operations and
52 compliance with applicable local laws and rules, consistent with the
53 scope of study set forth in the two thousand six Solid Waste Management
54 Plan; (c) estimates of waste composition and recycling diversion rates
55 from research conducted with respect to other jurisdictions; (d) a
56 computer-based model to measure the amount and composition of waste

1 generated by different commercial sectors; (e) recommendations of meth-
2 ods to encourage waste prevention, reuse, recycling and composting for
3 each of the commercial sectors studied, including any recommended chang-
4 es to applicable law; and (f) an assessment of the efficiency of the
5 transportation of commercial waste within the commercial system by,
6 among other things, mapping and monitoring routes along which commercial
7 waste and recycling trucks travel, including long-haul carriers within
8 and outside the city. Following completion of the commercial recycling
9 study, the commissioner shall determine whether any additional studies
10 are necessary in order to improve commercial recycling practices in the
11 city and shall promptly report such determination to the mayor and the
12 council.

13 4. Notwithstanding any other provision of law, nothing in this section
14 shall be construed to (a) supersede, amend or eliminate any obligation
15 of an awardee or designated carter, as such terms are defined in section
16 16-1000 of the code of the preceding municipality, to meet the require-
17 ments set forth in any applicable agreement entered into pursuant to
18 section 16-1002 of the code of the preceding municipality, or (b) other-
19 wise amend or supersede any term of such agreement.

20 § 16-306.1 Organic waste. 1. When used in this section or section
21 16-324 of this chapter:

22 a. "Arena" means an establishment or facility that hosts live sporting
23 or entertainment events.

24 b. "Capacity" means the combined capacity of facilities that are capa-
25 ble of accepting and processing, consistent with the terms of this
26 section and exceeding a nominal amount, organic waste expected to be
27 generated by and collected from designated covered establishments.

28 c. "Catering establishment" means any room, place or space in the
29 city, which is used, leased or hired out for the business of serving
30 food or beverages for a particular function, occasion or event, to which
31 the public is not invited or admitted and wherein music or entertainment
32 is permitted.

33 d. "Covered establishment" means:

34 (i) any location at which a food manufacturer has a floor area of at
35 least twenty-five thousand square feet;

36 (ii) any location at which a food wholesaler has a floor area of at
37 least twenty thousand square feet;

38 (iii) any location at which a retail food store has a floor area of at
39 least ten thousand square feet, or any retail food store that is part of
40 a chain of three or more retail food stores that have a combined floor
41 area space of at least ten thousand square feet and that operate under
42 common ownership or control and receive waste collection from the same
43 private carter;

44 (iv) arenas or stadiums having a seating capacity of at least fifteen
45 thousand persons;

46 (v) any food service establishment that is part of a chain of two or
47 more food service establishments that have a combined floor area of at
48 least eight thousand square feet and that: (1) operate under common
49 ownership or control; (2) are individually franchised outlets of a
50 parent business; or (3) do business under the same corporate name,
51 provided that the requirements of subparagraph (i) of paragraph a of
52 subdivision three of this section shall not apply to any such food
53 service establishment when the building or premises in which such food
54 service establishment is located is in compliance with such requirement
55 pursuant to paragraph h of this definition;

1 (vi) any location at which a food service establishment has a floor
2 area of at least seven thousand square feet, provided that the require-
3 ments of subparagraph (i) of paragraph a of subdivision three of this
4 section shall not apply to any such location when the building or prem-
5 ises containing such location is in compliance with such requirement
6 pursuant to paragraph g of this subdivision;

7 (vii) any building or premises where food service establishments
8 having a total combined floor area of at least eight thousand square
9 feet are located and where the owner of the building or premises, or its
10 agent, arranges or contracts with a private carter for the removal of
11 waste from food service establishments having no less than eight thou-
12 sand square feet of such building or premises, provided that any such
13 food service establishments shall comply with the requirements of
14 subparagraphs (ii), (iii) and (iv) of paragraph a of subdivision three
15 of this section, but such requirements shall not apply to the owner or
16 agent of any such building or premises;

17 (viii) any location at which a food preparation establishment has a
18 floor area of at least six thousand square feet;

19 (ix) any catering establishment that is required to provide for the
20 removal of waste pursuant to section 16-116 of the code of the preceding
21 municipality whenever the anticipated attendance for any particular
22 event is greater than one hundred persons;

23 (x) any food service establishments located within and providing food
24 to one or more hotels totaling at least one hundred sleeping rooms; and

25 (xi) sponsors of a temporary public event.

26 e. "Designated area" means within a one hundred mile radius of the
27 city.

28 f. "Food manufacturer" means any establishment that processes or
29 fabricates food products from raw materials for commercial purposes,
30 provided that it shall not include any establishment engaged solely in
31 the warehousing, distribution or retail sale of product.

32 g. "Food preparation establishment" means a business that is primarily
33 engaged in providing food or food services for a temporary, fixed time,
34 or based on contractual arrangements for a specified period of time at
35 locations other than such establishment's permanent place of business.

36 h. "Food service establishment" means any premises or part of a prem-
37 ises that is required to provide for the removal of waste pursuant to
38 section 16-116 of the code of the preceding municipality where food is
39 provided directly to the consumer, whether such food is provided free of
40 charge or sold, and whether consumption occurs on or off the premises.
41 Food service establishment shall include, but not be limited to, full-
42 service restaurants, fast food restaurants, cafes, delicatessens, coffee
43 shops, and business, institutional or government agency cafeterias, but
44 shall not include retail food stores, convenience stores, pharmacies,
45 and mobile food vending units, as such term is defined in section 89.03
46 of the health code. Food service establishment shall also not include
47 any premises or place of business where the sole or primary source of
48 food is a refreshment counter where the available food is limited to
49 items such as beverages, prepackaged items, and snacks.

50 i. "Food wholesaler" means any establishment primarily engaged in the
51 wholesale distribution of groceries and related products including, but
52 not limited to, packaged frozen food, dairy products, poultry products,
53 confectioneries, fish and seafood, meat products, and fresh fruits and
54 vegetables but shall not apply to establishments that handle only pre-
55 packaged, non-perishable foods.

1 j. "Hotel" shall have the same meaning as set forth in section 27-2004
2 of the housing maintenance code.

3 k. "In vessel composting" means a process in which organic waste is
4 enclosed in a drum, silo, bin, tunnel, reactor, or other container for
5 the purpose of producing compost, maintained under controlled conditions
6 of temperature and moisture and where air-borne emissions are
7 controlled.

8 l. "Organic waste" shall have the same meaning as set forth in section
9 16-303 of this title, except that for purposes of this section, organic
10 waste shall not include food that is donated to a third party, food that
11 is sold to farmers for feedstock, and meat by-products that are sold to
12 a rendering company.

13 m. "Private carter" means a business licensed by the business integri-
14 ty commission pursuant to title sixteen-A of the code of the preceding
15 municipality.

16 n. "Retail food store" means any establishment or section of an estab-
17 lishment where food and food products offered to the consumer are
18 intended for off-premises consumption, but shall exclude convenience
19 stores, pharmacies, greenmarkets or farmers' markets and food service
20 establishments.

21 o. "Sponsor of a temporary public event" means the applicant for a
22 street activity permit pursuant to chapter one of title fifty of the
23 rules of the city of New York, or any successor provision, for any
24 activity on a public street, street curb lane, sidewalk or pedestrian
25 island or plaza with an anticipated attendance of greater than five
26 hundred persons per day where the activity will interfere with or
27 obstruct the regular use of the location by pedestrian or vehicular
28 traffic. Such term shall not include activities conducted pursuant to a
29 valid film permit, demonstrations, parades or block parties.

30 p. "Stadium" means an establishment or facility that hosts live sport-
31 ing or entertainment events.

32 2. The commissioner shall, on a regular basis and no less than annual-
33 ly, evaluate the capacity of all facilities within the designated area
34 and the cost of processing organic waste by composting, aerobic or anaer-
35 oxic digestion, or any other method of processing organic waste that
36 the department approves by rule. If the commissioner determines that
37 there is sufficient capacity and that the cost of processing organic
38 waste consistent with this section is competitive with the cost of
39 disposing of organic waste by landfill or incineration, he or she shall
40 designate by rule all covered establishments or a subset of covered
41 establishments, based on any criteria, among such covered establish-
42 ments, that generate a quantity of organic waste that would not exceed
43 the evaluated capacity. All such designated covered establishments shall
44 comply with the requirements of subdivision three of this section begin-
45 ning no later than six months following such designation. In addition,
46 the commissioner shall include in his or her evaluation the capacity of
47 any facilities outside of the designated area that have arrangements or
48 contracts with transfer stations or private carters to accept and proc-
49 ess organic waste generated by and collected from covered establish-
50 ments.

51 3. a. Each designated covered establishment shall:

52 (i) either (1) ensure collection by a private carter of all organic
53 waste generated by such establishment for purposes of composting, aero-
54 bic or anaerobic digestion, or any other method of processing organic
55 waste that the department approves by rule, (2) transport its own organ-
56 ic waste to a facility that provides for composting, aerobic or anaero-

1 bic digestion, or any other method of processing organic waste that the
2 department approves by rule, provided that the covered establishment
3 first obtains a registration issued by the business integrity commission
4 pursuant to subdivision b of section 16-505 of the code of the preceding
5 municipality, or (3) provide for on-site in vessel composting, aerobic
6 or anaerobic digestion, or any other method of processing organic waste
7 that the department approves by rule for some or all of the organic
8 waste it generates on its premises, provided that it arranges for the
9 collection or transport of the remainder of such organic waste, if any,
10 in accordance with clause one or two of this subparagraph;

11 (ii) post a sign, which shall be in addition to any other sign
12 required to be posted pursuant to this code, that states clearly and
13 legibly the trade or business name, address, and telephone number of,
14 and the day and time of pickup by, the private carter that collects the
15 covered establishment's organic waste, that such covered establishment
16 transports its own organic waste, or that such covered establishment
17 provides for on-site processing for all of the organic waste it gener-
18 ates on its premises, provided that:

19 (1) such sign shall be prominently displayed by affixing it to a
20 window near the principal entrance to the covered establishment so as to
21 be easily visible from outside the building or, if this is not possible,
22 prominently displayed inside the covered establishment near the princi-
23 pal entrance;

24 (2) catering establishments shall not be required to display on such
25 sign the day and time of the pickup by the private carter that collects
26 the establishment's organic waste; and

27 (3) this paragraph shall not apply to sponsors of temporary public
28 events;

29 (iii) provide separate bins for the disposal of organic waste in any
30 area where such organic waste is generated and disposed of; and

31 (iv) post instructions on the proper separation of organic waste where
32 such instructions will be visible to persons who are disposing of organ-
33 ic waste, provided that this subparagraph shall not apply to sponsors of
34 temporary public events.

35 b. Any covered establishment that arranges for the collection by a
36 private carter of its organic waste pursuant to this subdivision shall
37 not commingle such organic waste with other designated and non-designat-
38 ed recyclable material or solid waste, and shall place such organic
39 waste out for collection by a private carter in a container or contain-
40 ers that (i) has a lid and a latch that keeps the lid closed and is
41 resistant to tampering by rodents or other wildlife, (ii) has the capac-
42 ity that meets the disposal needs of the covered establishment and its
43 private carter, (iii) is compatible with the private carter's hauling
44 collection practices, and (iv) is closed and latched at the time it is
45 placed out for collection.

46 4. Any private carter that collects source separated organic waste
47 shall either:

48 a. deliver collected organic waste to a transfer station that has
49 represented that it will deliver such organic waste to a facility for
50 purposes of composting, aerobic or anaerobic digestion, or any other
51 method of processing organic waste that the department approves by rule;
52 or

53 b. deliver such organic waste directly to a facility for purposes of
54 composting, aerobic or anaerobic digestion, or any other method of proc-
55 essing organic waste that the department approves by rule.

1 5. Any transfer station that receives source separated organic waste
2 pursuant to this section shall deliver or have delivered such organic
3 waste directly to a facility that accepts organic waste for purposes of
4 composting, aerobic or anaerobic digestion, or any other method of proc-
5 essing organic waste that the department approves by rule. This subdivi-
6 sion shall not apply to waste that cannot be processed at an organic
7 waste processing facility.

8 6. The provisions of this section relating to private carters shall be
9 enforced by the business integrity commission and the department. The
10 provisions of this section relating to covered establishments shall be
11 enforced by the department, the department of health and mental hygiene,
12 and the department of consumer and worker protection.

13 7. The department, the business integrity commission, the department
14 of health and mental hygiene, and the department of consumer affairs may
15 promulgate any rules necessary to implement this section, including, but
16 not limited to, rules establishing reporting requirements sufficient to
17 demonstrate compliance with this chapter.

18 8. Any person who owns or operates two or fewer food service estab-
19 lishments may request, and the commissioner shall grant, a waiver of the
20 requirements of this section if: a. no single food service establishment
21 has a floor area of at least seven thousand square feet; b. the food
22 service establishment or establishments are individually franchised
23 outlets of a parent business covered by paragraph d of the definition of
24 "covered establishment" set forth in subdivision one of this section;
25 and c. the owner or operator establishes that such food service estab-
26 lishment or establishments do not receive private carting services
27 through a general carting agreement between a parent business and a
28 private carter. Such waiver shall be valid for twelve months and shall
29 be renewable upon application to the commissioner via the department's
30 website.

31 § 16-307 City agency waste. 1. The commissioner shall adopt, amend and
32 implement rules, as necessary, governing the source separation or post-
33 collection separation, collection, processing, marketing, and sale of
34 designated recyclable materials including, but not limited to, desig-
35 nated metal, glass, plastic and paper generated by any agency, as such
36 term is defined in section 1-112 of the code of the preceding munici-
37 pality.

38 2. Every agency shall, no later than July first, two thousand eleven,
39 prepare and submit to the commissioner for approval, a waste prevention,
40 reuse and recycling plan. Such plan shall provide for the source sepa-
41 ration of designated metal, glass, plastic and paper, and such other
42 designated recyclable materials as the commissioner deems appropriate,
43 in all offices and buildings occupied by agencies that receive
44 collection service from the department and, to the extent practicable,
45 in those that receive private carter collection. Such plans shall
46 provide for the source separation of designated recyclable materials in
47 the lobbies of such offices or buildings that receive department
48 collection, unless the placement of bins for the source separation of
49 designated recyclable materials would be in violation of any other
50 provision of law, and, to the extent practicable, in the lobbies of such
51 offices or buildings that receive private carter collection. Each agency
52 shall designate a lead recycling or sustainability coordinator to over-
53 see implementation of such plans. If an agency has offices in more than
54 one city-owned building, then such agency shall designate one assistant
55 coordinator for each building in which such agency has offices, except

1 the building in which the lead coordinator has his or her office, to
2 assist the agency's lead coordinator.

3 3. On or before July first, two thousand twelve and annually thereaft-
4 er, every lead recycling or sustainability coordinator shall submit a
5 report to the head of his or her respective agency and to the commis-
6 sioner, summarizing actions taken to implement the waste prevention,
7 reuse and recycling plan for the previous twelve-month reporting period,
8 proposed actions to be taken to implement such plan, and updates or
9 changes to any information included in such plan. The department shall
10 consolidate the information contained in all reports prepared pursuant
11 to this subdivision as part of the department's annual zero waste report
12 required pursuant to subdivision b of section 16-316.5 of the code of
13 the preceding municipality.

14 § 16-307.1 School recycling. 1. The chancellor of the department of
15 education shall designate a sustainability director for the department
16 of education, who shall be responsible for (a) setting policies, guide-
17 lines and goals to promote waste prevention, reuse and recycling prac-
18 tices, and (b) coordinating the department of education's waste
19 prevention, reuse and recycling program in all school buildings, charter
20 school locations, office buildings, and any other facilities under the
21 jurisdiction of the department of education that receive department
22 collection service.

23 2. The chancellor of the department of education shall promulgate such
24 rules as may be necessary to require that each school building, charter
25 school location, office building, and any other facility under the
26 jurisdiction of the department of education that receives department
27 collection service, develop a site-specific waste prevention, reuse and
28 recycling plan. Each such plan shall be implemented by January first,
29 two thousand eleven. Such plan shall include, at a minimum, a require-
30 ment that each classroom maintain a separate receptacle, container or
31 bin for the collection of designated recyclable paper, and that such
32 receptacle, container or bin be appropriately labeled or decorated with
33 recycling information. Such plan shall also provide that separate recep-
34 tacles, containers or bins for the collection of designated metal, glass
35 and plastic be appropriately labeled or decorated with recycling infor-
36 mation and be placed as close as practicable to school entrances, unless
37 the placement of such bins would be in violation of any other provision
38 of law, and in locations within schools where food and beverages are
39 routinely consumed.

40 3. The principal of each school under the jurisdiction of the depart-
41 ment of education shall designate a sustainability coordinator for his
42 or her school who shall be responsible for implementing his or her
43 school's waste prevention, reuse and recycling plan. The principal or
44 the sustainability coordinator shall complete, and submit to the depart-
45 ment of education sustainability director and to the chancellor, an
46 annual survey regarding such school's compliance with its waste
47 prevention, reuse and recycling plan.

48 4. The chancellor shall submit a report to the commissioner by January
49 first of each year regarding compliance with the requirements of this
50 section for the preceding July first through June thirtieth. The depart-
51 ment shall include the chancellor's report as part of the department's
52 annual zero waste report required pursuant to subdivision b of section
53 16-316.5 of the code of the preceding municipality.

54 5. The department shall distribute a model school waste prevention,
55 reuse and recycling plan to all primary and secondary schools not under
56 the jurisdiction of the department of education that receive department

1 collection service. All such primary and secondary schools shall desig-
2 nate a sustainability coordinator for each such school, and develop a
3 site-specific waste prevention, reuse and recycling plan. Each such plan
4 shall be implemented by January first, two thousand eleven. Such plan
5 shall include, at a minimum, a requirement that each room used primarily
6 as a classroom for students between kindergarten and the twelfth grade
7 maintain a separate receptacle, container or bin for the collection of
8 designated recyclable paper, and that such receptacle, container or bin
9 be appropriately labeled or decorated with recycling information. Such
10 plan shall also provide that separate receptacles, containers or bins
11 for the collection of designated metal, glass and plastic be appropri-
12 ately labeled or decorated with recycling information and be placed as
13 close as practicable to school entrances, unless the placement of such
14 bins would be in violation of any other provision of law. Such bins
15 shall also be placed in centralized locations within such schools where
16 food and beverages are routinely consumed, other than classrooms, such
17 as cafeterias and lunchrooms, or, if such school lacks a cafeteria or
18 lunchroom, in a location readily accessible to all students in such
19 school.

20 § 16-307.2 City agency food waste prevention plans. 1. Definitions.
21 As used in this section, the following terms have the following mean-
22 ings:

23 a. Covered agency. The term "covered agency" means an agency that has
24 entered into at least one food purchase contract within the previous
25 twelve months.

26 b. Food purchase contract. The term "food purchase contract" means:
27 (i) a contract entered into by an agency in excess of the small purchase
28 limits established by the procurement policy board, the principal
29 purpose of which is to provide food, provided that such contract author-
30 izes purchases only by the agency that entered into such contract, or
31 (ii) a purchase order for food the value of which exceeds one hundred
32 thousand dollars, made by an agency against an existing contract.

33 c. Surplus food. The term "surplus food" means any food obtained
34 through a food purchase contract that is not used for the purpose for
35 which it was purchased and that would otherwise be discarded.

36 2. Agency food waste prevention plan. Every covered agency shall, no
37 later than October first, two thousand twenty-one, prepare and submit to
38 the commissioner for approval, a food waste prevention plan. Any agency
39 that becomes a covered agency after October first, two thousand twenty-
40 one shall prepare and submit to the commissioner for approval, a food
41 waste prevention plan within ninety days of becoming a covered agency.
42 The commissioner shall submit each approved agency food waste prevention
43 plan to the speaker of the council not later than seven days after such
44 approval. Such plan shall conform to all applicable provisions of law
45 and, at a minimum:

46 a. Establish guidelines for how to identify surplus food that may be
47 safely donated;

48 b. Identify methods to reduce the amount of surplus food, including
49 the utilization of the food donation web portal described in section
50 16-497 of the code of the preceding municipality, when appropriate;

51 c. Set forth procedures for the safe, efficient donation of surplus
52 food; and

53 d. Include any other provisions necessary to facilitate the reduction
54 of surplus food and the donation of surplus food.

55 3. Food waste prevention coordinator. Upon approval of an agency's
56 food waste prevention plan by the commissioner, each covered agency

1 shall designate a coordinator to oversee implementation of the plan
2 required by subdivision two of this section.

3 4. Report. a. On or before January first, two thousand twenty-two, and
4 annually thereafter for the previous twelve-month reporting period, each
5 covered agency shall submit a report to the commissioner. Such report
6 shall include, at a minimum:

7 i. A summary of the actions taken to implement the agency's food waste
8 prevention plan;

9 ii. Any proposed additional actions to be taken to implement such
10 plan; and

11 iii. Any updates or changes to any information included in such plan.

12 b. The department shall consolidate the information contained in all
13 reports prepared pursuant to this subdivision and include such informa-
14 tion as part of the department's annual zero waste report required
15 pursuant to subdivision b of section 16-316.5 of the code of the preced-
16 ing municipality.

17 § 16-307.3 School food waste. 1. Definitions. As used in this section,
18 the following terms have the following meanings:

19 a. Chancellor. The term "chancellor" means the chancellor of the city
20 school district of the city of New York.

21 b. Food purchase contract. The term "food purchase contract" means any
22 purchase order or contract entered into by the department of education,
23 the principal purpose of which is to provide food, and the value of
24 which exceeds one hundred thousand dollars.

25 c. School. The term "school" means a school of the city school
26 district of the city of New York.

27 d. Surplus food. The term "surplus food" means any food obtained
28 through a food purchase contract that is not used for the purpose for
29 which it was purchased and that would otherwise be discarded.

30 2. Food waste prevention plan. No later than October first, two thou-
31 sand twenty-one, the chancellor shall prepare and submit to the commis-
32 sioner a food waste prevention plan. Preparation of such food waste
33 prevention plan shall provide school sustainability coordinators desig-
34 nated pursuant to subdivision three of section 16-307.1 of this chapter
35 an opportunity to offer ideas concerning food waste prevention. Such
36 plan shall conform to all applicable provisions of law and include, but
37 need not be limited to, the following information:

38 a. Guidelines for how to identify surplus food that may be safely
39 donated;

40 b. Any methods the chancellor has identified to reduce the amount of
41 surplus food in schools;

42 c. Any procedures the chancellor has identified that would allow the
43 department of education or a school to donate surplus food safely and
44 efficiently; and

45 d. Any barriers the chancellor has identified that would prevent the
46 safe and efficient donation of surplus food.

47 3. Review by commissioner. The commissioner shall review the plan
48 required pursuant to subdivision two of this section within ninety days
49 of its submission and shall submit recommendations on the plan to the
50 chancellor. The commissioner shall simultaneously submit a copy of the
51 chancellor's plan and the commissioner's recommendations to the speaker
52 of the council.

53 4. Report. On or before February first, two thousand twenty-two, the
54 chancellor shall submit a report to the commissioner. Such report shall
55 include, at a minimum:

- 1 a. A summary of actions taken to implement the food waste prevention
2 plan;
- 3 b. A summary of actions that the chancellor proposes be taken to
4 implement such plan; and
- 5 c. Any updates or changes to any information included in such plan.
- 6 § 16-308 Organic waste. 1. The commissioner shall provide for the
7 source separation, collection and composting of yard waste, unless the
8 generator otherwise provides for recycling or storage for composting or
9 mulching. In addition, the commissioner shall provide for the collection
10 and composting of yard waste generated and source separated at residen-
11 tial properties owned or operated by the New York city housing authori-
12 ty. There shall be operated by or on behalf of the department one or
13 more yard waste composting facilities through which the department shall
14 compost yard waste collected by or delivered to the department pursuant
15 to this section. In order to comply with this provision, the department
16 may utilize the services of privately-owned or operated facilities. The
17 department shall also work in consultation with the composting facility
18 siting task force established by the two thousand six solid waste
19 management plan to identify additional locations to site yard waste
20 composting facilities with the goal of establishing at least one such
21 composting facility in each borough where the department conducts yard
22 waste composting collection.
- 23 2. Any city agency, or person under contract with a city agency, that
24 generates a substantial amount of yard waste shall, in coordination with
25 the department, provide for the source separation, collection and
26 composting of such yard waste. Unless otherwise provided by law, the
27 department shall accept for composting any city agency yard waste source
28 separated for department collection pursuant to this subdivision.
- 29 3. No landfill, waste transfer station, intermodal facility, incinera-
30 tor or resource recovery facility owned, operated or used by the depart-
31 ment shall accept truck loads of department-managed waste primarily
32 composed of yard waste for final disposal, except that composted yard
33 waste may be used as part of the final vegetative cover for a department
34 landfill.
- 35 4. All city agencies responsible for the maintenance of public lands
36 shall to the maximum extent practicable and feasible give preference to
37 the use of compost materials derived from the city's yard waste in all
38 land maintenance activities.
- 39 5. Generators of yard waste, except those identified in subdivision
40 seven of this section, shall separate, tie, bundle, or place into bags
41 or receptacles, in accordance with rules promulgated by the commission-
42 er, any yard waste set out for collection by the department pursuant to
43 subdivision two of this section. The commissioner shall notify all resi-
44 dents in districts that receive yard waste collection by the department
45 of such pre-collection procedures, and undertake any other action neces-
46 sary to effectuate the purposes of this subdivision.
- 47 6. No person engaged in a business that generates yard waste shall
48 leave such yard waste for collection by the department, or disperse such
49 yard waste in or about the curb or street. Any person engaged in a busi-
50 ness that generates yard waste shall be required to collect and dispose
51 of such yard waste at a permitted composting facility; provided, howev-
52 er, that if the department, by written order of the commissioner, deter-
53 mines that there is insufficient capacity at permitted composting facil-
54 ities within the city, then such yard waste may be disposed of at any
55 appropriately permitted solid waste management facility.

1 7. Each permitted composting facility within the city, including those
2 operated by city agencies, shall annually report to the commissioner the
3 amount of yard waste and any other organic waste collected and disposed
4 of by weight at such composting facility. All such reports shall be
5 submitted prior to February first of each calendar year and shall
6 contain the amount collected and disposed of for the previous calendar
7 year. The department shall consolidate the information contained in all
8 reports prepared pursuant to this subdivision and include such informa-
9 tion as part of the department's annual zero waste report required
10 pursuant to subdivision b of section 16-316.5 of the code of the preced-
11 ing municipality.

12 8. No person residing in a district where the department provides
13 residential yard waste composting collection pursuant to subdivision two
14 of this section shall dispose of grass clippings as regular waste for
15 collection by the department during the period of time when the depart-
16 ment conducts such composting collection. The department shall conduct
17 outreach and education to inform residents within such districts of the
18 dates when it will conduct yard waste composting collection. No person
19 residing in a district where the department provides residential yard
20 waste composting collection shall be held liable for a violation of this
21 subdivision during the first year the department provides such residen-
22 tial yard waste composting collection.

23 § 16-308.1 Curbside organics collection. 1. Organics collection
24 program. The department shall establish a mandatory citywide curbside
25 organics collection program for the diversion of organic waste in
26 accordance with this section. Such program shall be implemented by no
27 later than:

28 a. October second, two thousand twenty-three, for residential proper-
29 ties in no less than thirty sanitation districts, as determined by the
30 commissioner by rule.

31 b. October seventh, two thousand twenty-four, for residential proper-
32 ties in all remaining sanitation districts.

33 2. Implementation plan. No later than July first, two thousand twen-
34 ty-three, the department shall develop, submit to the mayor and speaker
35 of the council, and post on the department's website a curbside organics
36 collection implementation plan. Such plan shall include information
37 related to, at minimum:

38 a. How the department will implement such program;

39 b. The education and outreach program required pursuant to subdivision
40 five of this section; and

41 c. How the department will distribute necessary materials, including
42 rodent-proof organics collection bins, at no cost to residential build-
43 ing owners, and a timeline for such distribution.

44 3. End use of collected organic waste. In the next solid waste manage-
45 ment plan prepared pursuant to section 27-0107 of the environmental
46 conservation law and presented to the council pursuant to section 16-140
47 of the code of the preceding municipality following the effective date
48 of this section, the department shall include a plan to maximize the
49 usable composting of organic waste collected pursuant to this section.
50 Such plan for the usable composting of organic waste shall describe the
51 amount of organic waste collected and sent to composting facilities to
52 be processed into usable compost pursuant to this section.

53 4. Reporting. The department shall report by weight the total amount
54 of organic waste diverted pursuant to this section during the previous
55 year, disaggregated by sanitation district. Such report shall be

1 included as part of the department's annual zero waste report required
2 pursuant to section 16-316.5 of the code of the preceding municipality.

3 5. Education and outreach. The department shall develop an outreach
4 and education program to educate residents, building owners, and staff
5 of residential buildings on the curbside organics collection program
6 established pursuant to this section. Materials used for such outreach
7 and education program shall be available in all designated citywide
8 languages, as defined in section 23-1101 of the code of the preceding
9 municipality, and any additional languages as determined by the depart-
10 ment in consultation with local community organizations. No later than
11 two months prior to the implementation of the curbside organics
12 collection program for residential properties in a sanitation district
13 pursuant to subdivision one of this section, the department shall
14 distribute such materials to residents, building owners, and community
15 based organizations in such district. Such materials shall also be made
16 available on the department's website. Such materials shall include:

17 a. A detailed explanation of organic waste and the benefits of curb-
18 side organics collection;

19 b. Information on how the curbside organics collection program will be
20 implemented and instructions for how to properly source separate organic
21 waste; and

22 c. Any other information as determined by the commissioner.

23 6. Rules. The commissioner shall adopt and implement rules as neces-
24 sary to effectuate this section. Such rules may include, but need not be
25 limited to, the designation of organic waste as a recyclable material
26 pursuant to subdivision two of section 16-305 of this chapter, proce-
27 dures requiring the placement of organic waste at the curbside, in
28 specialized containers or in another manner determined by the commis-
29 sioner pursuant to subdivision four of such section, and the implementa-
30 tion and enforcement of this section and such rules in buildings
31 containing four or more dwelling units pursuant to subdivisions five,
32 six and seven of section 16-305 of this chapter.

33 7. Penalty. A residential building owner who violates this section
34 shall be liable for a civil penalty as set forth in section 16-324 of
35 this title, except that prior to April first, two thousand twenty-five,
36 a residential building owner who violates this section shall be issued a
37 written warning that a violation has been observed, provided that noth-
38 ing in this subdivision shall preclude the department from enforcing any
39 rules relating to yard waste separation promulgated pursuant to section
40 16-308 of this chapter.

41 § 16-308.2 Organic waste drop off sites. 1. Definitions. As used in
42 this section, the following terms have the following meanings:

43 a. Community partner. The term "community partner" means a not-for-
44 profit organization, community garden or other similar organization that
45 operates or makes available to the public an organic waste drop off
46 site.

47 b. Community scale composting facility. The term "community scale
48 composting facility" means a physical location operated by a not-for-
49 profit organization that engages in composting, through a registration
50 or agreement with the department, but that is not of sufficient size so
51 as to be required to obtain a permit for the operation of such facility
52 from the New York state department of environmental conservation.

53 c. Organic waste drop off site. The term "organic waste drop off site"
54 means a physical location for the collection of organic waste from
55 members of the public.

1 2. Except as provided in subdivision three of this section, no later
2 than April first, two thousand twenty-four, the department, in consulta-
3 tion with community partners, shall ensure that no less than thirty
4 organic waste drop off sites are established and operational throughout
5 the city, provided that no less than three such sites are established in
6 each borough. Each such site shall have a minimum of twenty hours avail-
7 able per week for individuals to drop off organic waste, except that
8 organic waste drop off sites operated by community partners shall be
9 open for a minimum of five hours per week, and each such organic waste
10 drop off site shall be located in a geographic area that is easily
11 accessible, including for persons with disabilities, and in close prox-
12 imity to public transportation, provided, however, an organic waste drop
13 off site operated by a community partner may be operated on a seasonal
14 basis.

15 3. For the purposes of subdivision two of this section, an organic
16 waste drop off site may be a community scale composting facility or a
17 drop off site operated by the department, including co-location with a
18 recycling center, as required pursuant to section 16-310.3 of this chap-
19 ter.

20 4. No later than January first, two thousand twenty-six, the depart-
21 ment shall review the requirements of subdivision two of this section
22 and submit to the mayor and the speaker of the council a recommendation
23 as to whether such drop off sites should be continued.

24 5. Site information. The department shall post on its website informa-
25 tion about each organic waste drop off site established pursuant to this
26 section. Such information shall include each such site's address,
27 contact information, hours of operation and services provided. Where
28 applicable, such information shall also be clearly posted in a publicly
29 visible location at the entrance to each such site.

30 6. Education and outreach. The department, in consultation with any
31 agency or office designated by the mayor, shall develop an education and
32 outreach program to inform residents about the organic waste drop off
33 sites and community scale composting facilities established pursuant to
34 this section. Such education and outreach shall include the information
35 set forth in subdivision five of this section. Any educational or
36 outreach materials developed pursuant to this section, as well as any
37 other educational materials on recycling that the commissioner deems
38 relevant, shall be available in all designated citywide languages, as
39 defined in section 23-1101 of the code of the preceding municipality,
40 and supplied to each organic waste drop off site. The department shall
41 also perform outreach to community partners and other not-for-profit
42 organizations to provide them with information on how the public can
43 engage in opportunities to work with the department to open and operate
44 organic waste drop off sites and community scale composting facilities.

45 7. Reporting. The department shall report annually on the operation of
46 organic waste drop off sites. Such report shall be included as part of
47 the department's annual zero waste report required pursuant to section
48 16-316.5 of the code of the preceding municipality. Such report shall
49 include, at a minimum, the following information, disaggregated by
50 organic waste drop off site where feasible:

- 51 a. The total amount of material collected at such site;
- 52 b. The number of individuals who used such site during the reporting
53 period;
- 54 c. The number of full-time and part-time staff members working at such
55 site, if any; and

1 d. Where the organic waste collected at such site was processed
2 following collection.

3 § 16-309 Christmas trees. The commissioner shall establish and imple-
4 ment a curbside collection system for Christmas trees during a minimum
5 of two weeks in January of each year and provide for the composting or
6 recycling of the Christmas trees the department collects or receives for
7 disposal.

8 § 16-310 Public space recycling. 1. The department shall expand its
9 public space recycling program by increasing the number of public space
10 recycling receptacles for the collection of recyclable materials includ-
11 ing, but not limited to, metal, glass, plastic and paper designated as
12 recyclable materials by the commissioner, to a cumulative total of at
13 least five hundred public space recycling receptacles, and to a cumula-
14 tive total of at least one thousand public space recycling receptacles,
15 at public locations in the city, which shall be in or near public parks,
16 transit hubs, or commercial locations with high-pedestrian traffic. As
17 part of such expansion, the department shall place public space recycl-
18 ing receptacles in all business improvement districts that provide
19 public litter basket maintenance. Whenever practicable, public space
20 recycling receptacles placed pursuant to this section shall be placed
21 adjacent to public litter baskets.

22 2. Notwithstanding the provisions of subdivision one of this section,
23 the department shall not be required to expand the public space recycl-
24 ing program beyond existing or newly-established collection routes that
25 can be efficiently serviced by the department. The commissioner shall
26 have the authority to remove any public space recycling receptacle
27 placed pursuant to this section, provided that the department replaces
28 any such public space recycling receptacle, within thirty days of
29 removal, with additional public space recycling receptacles at the same
30 or in a different location on a one-to-one basis.

31 3. No person responsible for removing or transporting recyclable mate-
32 rials placed in public space recycling receptacles shall commingle such
33 recyclable materials with non-recyclable materials or otherwise improv-
34 properly dispose of such recyclable materials.

35 4. The department shall report the total number of public space recy-
36 cling receptacles added during the relevant reporting year, and the
37 locations in which they were placed. Such report shall be included as
38 part of the department's annual zero waste report required pursuant to
39 subdivision b of section 16-316.5 of the code of the preceding municipi-
40 pality.

41 5. The department may enter into sponsorship or partnership agreements
42 with entities such as for-profit and not-for-profit corporations and
43 district management associations established in accordance with section
44 25-414 of the code of the preceding municipality to further the goals of
45 this chapter.

46 § 16-310.1 Textile reuse and recycling program. 1. On or before Janu-
47 ary first, two thousand eleven, the department shall establish a city-
48 wide textile reuse and recycling program that shall, at a minimum,
49 provide for the recovery of textiles by placing department-approved
50 publicly accessible textile drop-off bins at appropriate locations on
51 city property or property maintained by the city and organizing public
52 textile reuse and recycling sites throughout the city that provide
53 convenient drop-off locations for all city residents. In addition, the
54 commissioner shall explore opportunities to work cooperatively with
55 private entities, including, but not limited to, not-for-profit corpo-
56 rations and religious institutions, to promote expanded siting of

1 publicly accessible textile drop-off bins on private property throughout
2 the city. The department shall consider using department personnel or
3 facilities in order to implement the provisions of this section.

4 2. No publicly accessible textile drop-off bin placed pursuant to this
5 section shall be placed on city property or property maintained by the
6 city, or on a public sidewalk or roadway, unless otherwise authorized by
7 the city. No publicly accessible textile drop-off bin shall be placed on
8 private property without the written permission of the property owner or
9 the property owner's authorized agent. The owner or other person respon-
10 sible for each such bin shall report at least every three months to the
11 department the amount of textiles collected in such bin by weight. Each
12 publicly accessible textile drop-off bin shall prominently display on
13 the front and on at least one other side of the bin, the name, address
14 and telephone number of the owner or other person responsible for the
15 bin. This information shall be printed in characters that are plainly
16 visible. In no event shall a post office box be considered an acceptable
17 address for purposes of this subdivision.

18 3. The department shall report by weight the amount of textiles
19 collected in publicly accessible textile drop-off bins located on city
20 property or property maintained by the city, through public textile
21 reuse and recycling sites pursuant to subdivision one of this section
22 and in publicly accessible textile drop-off bins maintained on private
23 property. Such report shall be included as part of the department's
24 annual zero waste report required pursuant to subdivision b of section
25 16-316.5 of the code of the preceding municipality.

26 § 16-310.2 Paint stewardship program. 1. The commissioner shall estab-
27 lish a voluntary paint stewardship program under which manufacturers of
28 architectural paint, in cooperation with distributors of architectural
29 paint and retail establishments that sell, or offer for sale, architec-
30 tural paint in the city, may establish a collection or other reclamation
31 system to collect architectural paint from consumers for reuse, recycl-
32 ing or environmentally sound disposal.

33 2. The commissioner shall provide assistance or guidance to partic-
34 ipating architectural paint manufacturers, distributors and retail
35 establishments in developing and implementing strategies to reduce the
36 quantity of architectural paint in the waste stream, promote the reuse
37 of architectural paint that would otherwise be discarded and disseminate
38 information regarding options to recycle architectural paint including,
39 but not limited to, posting information regarding the voluntary paint
40 stewardship program on the department's website.

41 § 16-310.3 Community recycling. 1. Community recycling centers. No
42 later than December thirty-first, two thousand twenty-four, the depart-
43 ment shall ensure that at least two community recycling centers are
44 established and operational in each borough. Each such center shall be
45 available for drop offs at least twenty-four hours per week, including
46 weekends. Such centers shall be located in geographic areas that are
47 easily accessible, including for persons with disabilities, and shall be
48 in close proximity to public transportation and public housing develop-
49 ments, where practicable. Any organic waste drop off site provided for
50 by local law may be co-located within such a center.

51 2. Community recycling events. No later than September thirtieth, two
52 thousand twenty-three, and annually thereafter, the department shall
53 host no less than one community recycling event in each community
54 district. Each such event shall be located in a geographic area that is
55 easily accessible, including for persons with disabilities, and in close
56 proximity to public transportation and public housing developments,

1 where practicable. Such events may be co-located with other sanitation
2 services. Community recycling events required by this subdivision shall
3 be in addition to any recycling event operated by an entity or organiza-
4 tion other than the department, provided that any recycling event oper-
5 ated pursuant to a contract with the department shall be considered to
6 be hosted by the department for purposes of this section.

7 3. Materials collected. Each community recycling center and community
8 recycling event shall accept, to the extent practicable, inorganic mate-
9 rial that is not collected through regular curbside collection but that
10 can be recycled or reused. One community recycling center per borough
11 shall also accept hazardous material, as practicable and as defined by
12 the department, that should not be disposed of as curbside waste.

13 4. Community recycling center and event information. The department
14 shall make available on the department's website, and distribute to each
15 local community board, the following information about the community
16 recycling centers and community recycling events required by this
17 section:

- 18 a. Location, including street address and borough;
- 19 b. Contact information;
- 20 c. Hours of operation; and
- 21 d. Services provided.

22 5. Education and outreach. The department, in consultation with any
23 agency identified by the mayor, shall develop an outreach and education
24 program to inform residents about community recycling centers and commu-
25 nity recycling events, including their locations, contact information,
26 hours of operation, and the services they provide.

27 6. Reporting. The department shall report annually on the operation
28 community recycling centers and community recycling events required
29 pursuant to this section. Such report shall be included as part of the
30 department's annual waste diversion report required pursuant to section
31 16-316.5 of the code of the preceding municipality. Such report shall
32 include, but need not be limited to, the following information, disag-
33 gregated by community recycling center and community recycling event,
34 where feasible:

- 35 a. The number of individuals utilizing such centers and events;
- 36 b. The material collected at each such center and event, disaggregated
37 by material type;
- 38 c. The number of full-time and part-time staff persons working at each
39 such center and event;
- 40 d. Where each type of material collected is sent; and
- 41 e. A description of the education programs offered to the public.

42 § 16-311. Recycling outreach and education. 1. The department shall
43 provide instruction and materials for residential building owners, net
44 lessees or persons in charge of such buildings, and their employees and
45 residents, in order to improve compliance with the provisions of this
46 chapter.

47 2. The commissioner shall establish a recycling education program that
48 shall include recycling instructional workshops, training curricula and
49 other relevant materials for residential building owners, net lessees or
50 persons in charge of such buildings, and their employees and residents,
51 including an internet-based recycling tutorial. Such program shall also
52 provide instructional workshops, training curricula, and other relevant
53 material to employees of city agencies, including a leaf and yard waste
54 training program for employees of any such agencies that generate
55 significant leaf and yard waste. The commissioner may utilize a private

1 entity or not-for-profit corporation to assist with the establishment or
2 performance of such program.

3 § 16-312 Processing recyclable materials. The commissioner shall
4 establish procedures and standards for processing recyclable materials
5 designated pursuant to section 16-305 of this chapter in city owned or
6 operated recycling centers, city owned or operated transfer stations or
7 any city owned or operated facility that renders recyclable materials
8 suitable for reuse or marketing and sale. The commissioner shall annu-
9 ally review such procedures and standards and make any changes necessary
10 to conform to the requirements of the marketplace.

11 § 16-313 Marketing recyclable materials. The department shall estab-
12 lish procedures, standards and strategies to market the recyclable mate-
13 rials designated pursuant to section 16-305 of this chapter, including
14 but not limited to maintaining a list of prospective buyers, establish-
15 ing contact with prospective buyers, entering into contracts with
16 buyers, and reviewing and making any necessary changes in collecting or
17 processing the materials to improve their marketability.

18 § 16-314 Recycling program revisions. The commissioner shall annually
19 review the recycling program and all rules promulgated thereunder, and
20 shall make the necessary revisions to improve the efficiency of collect-
21 ing, processing, marketing and selling the materials recycled pursuant
22 to this title. These revisions may include designating additional
23 recyclable materials. The commissioner shall not delete designated mate-
24 rials without designating additional materials so that the total quanti-
25 ty, by weight, of all designated recyclable materials collected, proc-
26 essed, marketed and sold does not decrease.

27 Where the commissioner determines that it is appropriate to delete a
28 designated material, the department shall provide notice of such
29 deletion to the mayor and the council, including the reason for such
30 deletion, and shall provide any relevant data supporting such decision.

31 § 16-315 Notice, education and research programs. 1. In addition to
32 the notice requirements of this code, within thirty days of the effec-
33 tive date of any rules promulgated pursuant to this title, and as
34 frequently thereafter as the commissioner deems necessary, the depart-
35 ment shall notify all persons occupying residential, commercial and
36 industrial premises affected by the rules, of the requirements of the
37 rules, by posting notices containing recycling information in public
38 places where such notices are customarily placed and, in the commission-
39 er's discretion, employing any other means of notification deemed neces-
40 sary and appropriate.

41 2. The commissioner shall compile relevant recycling, reuse and
42 composting information, including material available on the department's
43 website, to create and make available a guide to the city's residential
44 recycling program. Such guide shall, at a minimum, summarize and explain
45 the laws and rules governing curbside recycling, list the collection
46 locations and collection dates for non-curbside collected recyclable
47 materials such as household hazardous waste and textiles, and provide
48 detailed information and instructions on how to recycle any materials
49 not collected by the department for which non-city or non-department
50 recycling programs exist. Such guide shall be made available to resi-
51 dential building owners, or the net lessees or persons in charge of such
52 buildings, community boards, not-for-profit organizations, public
53 schools, and other relevant agencies and entities, and shall also be
54 made available on the department website. The commissioner shall update
55 the recycling guide biennially, or as necessary, based on changes to

1 recycling laws, rules or other relevant information to be included ther-
2 ein.

3 3. The department shall develop and implement an educational program,
4 in conjunction with the department of education, private schools, labor
5 organizations, businesses, neighborhood organizations, and other inter-
6 ested and affected parties, and using flyers, print and electronic
7 advertising, public events, promotional activities, public service
8 announcements, and such other techniques as the commissioner determines
9 to be useful, to assure the greatest possible level of compliance with
10 the provisions of this title. The educational program shall encourage
11 waste reduction, the reuse of materials, the purchase of recyclable
12 products, and participation in city and private recycling activities.

13 4. The department shall perform such research and development activ-
14 ities, in cooperation with other city agencies, and public and private
15 institutions, as the commissioner determines to be helpful in implement-
16 ing the city's recycling program. Such research shall include, but not
17 be limited to, investigation into the use of cooperative marketing
18 programs, material recovery facilities, recycling as an economic devel-
19 opment tool, export promotion, tax credits and exemptions for market
20 promotion.

21
22

Chapter 5 RECYCLING ADVISORY BOARDS

23 § 16-317 Citizens' solid waste advisory boards; membership. Within six
24 months of the effective date of this title, the city shall establish a
25 citizens' solid waste advisory board (the "citizens' board"), consisting
26 of no fewer than twenty members who for the first term shall be
27 comprised of the members of the city's citizens' advisory committee on
28 resource recovery and other persons appointed jointly by the mayor and
29 the council members. For each subsequent term, all members shall be
30 appointed jointly by the mayor and the council members. The membership
31 of the citizens' board shall represent community boards, recycling
32 industries, carting industries, environmental organizations, government
33 agencies, labor organizations, business organizations, property owners,
34 tenant organizations and members of the general public. Members shall
35 serve for a term of one year without compensation and shall designate
36 one member to serve as chairperson and one as vice-chairperson.

37 § 16-318 Functions of the citizens' board. 1. The department shall
38 submit to the mayor the portion of the biennial report addressing the
39 city's recycling program that is prepared pursuant to the city's two
40 thousand six solid waste management plan, simultaneous with the
41 submission of such report to the mayor and the council. The mayor shall
42 distribute copies of the plans to each member of the citizens' board.
43 Within ninety days thereafter, the citizens' board shall review the
44 plans, conduct a public hearing on the plans and make written recommen-
45 dations to the mayor, the department and the council with respect to the
46 recycling program. The citizens' board shall also annually advise the
47 mayor and the department with respect to the development, promotion and
48 operation of the recycling program and pursuant to this function shall
49 formulate and recommend:

50 (a) annual recycling goals equal to or greater than those set forth in
51 section 16-305 of this title and the methods proposed to achieve such
52 goals;

53 (b) means to encourage community participation in the recycling
54 program; and

1 (c) means to promote the recycling program and educate the public with
2 regard to the program.

3 2. The citizens' board shall assume all the responsibilities and func-
4 tions of the city's citizens' advisory committee on resource recovery.

5 § 16-319 Citywide recycling advisory board; membership. There shall be
6 a citywide recycling advisory board (the "citywide board") consisting of
7 at least one representative from each citizen's board, five members
8 appointed by the council, and five members appointed by the mayor. The
9 membership of the citywide board shall represent community boards, recy-
10 cing industries, carting industries, environmental organizations,
11 government agencies, labor organizations, business organizations, real
12 property owners, tenant organizations and members of the general public.
13 Members shall serve for a term of one year without compensation and
14 shall designate one member to serve as chairperson and one as vice-
15 chairperson.

16 § 16-320 Functions of the citywide board. The citywide board shall
17 meet at least four times a year to discuss citywide recycling issues,
18 including but not limited to budgetary issues. The citywide board shall
19 annually review the department's recycling program and make recommenda-
20 tions to the mayor and the council concerning improvements to and chang-
21 es in the program.

22 § 16-321 Disclosure requirements. 1. Whenever a person, other than a
23 public servant, appointed to any advisory board created pursuant to this
24 chapter, engages in any business dealings with the department, or
25 engages in business dealings with any other agency that relate to proc-
26 essing or disposal of solid waste or of waste described in paragraph (c)
27 of subdivision fifteen of section 16-303 of this title or to recycling,
28 or has an interest in a firm that is engaged in such business dealings
29 with the department or with such other agency, such person shall, prior
30 to appointment, disclose the nature of such business dealings to the
31 commissioner and to the body or officer appointing such person, and,
32 after appointment, disclose the nature of such business dealings to the
33 commissioner and to all other members of such board; provided that such
34 person need not disclose the amount of such business dealings.

35 2. When used in this section:

36 (a) "Advisory committee" means a committee, council, board or similar
37 entity that is constituted to provide advice or recommendations to the
38 city and which has no authority to take a final action on behalf of the
39 city, to take any action that would have the effect of conditioning,
40 limiting or requiring any final action by any other agency, or to take
41 any action that is authorized by law.

42 (b) "Agency" means a city, county, borough or other office, position,
43 administration, department, division, bureau, board, commission, author-
44 ity, corporation, advisory committee or other agency of government, the
45 expenses of which are paid in whole or in part from the city treasury,
46 and shall include but not be limited to, the council, the offices of
47 each elected official, the department of education, community school
48 boards, community boards, the financial services corporation, the health
49 and hospitals corporation and the public development corporation, but
50 shall not include any court or any corporation or institution maintain-
51 ing or operating a public library, museum, botanical garden, arboretum,
52 tomb, memorial building, aquarium, zoological garden or similar facili-
53 ty.

54 (c) "Blind trust" means a trust in which a candidate for any advisory
55 board created pursuant to this chapter or a member of such board, or the
56 spouse or unemancipated child of such candidate or member, has a benefi-

1 cial interest, the holdings and sources of income of which such candi-
2 date or member and such spouse and unemancipated child have no know-
3 ledge, and the trustee of which shall have independent authority and
4 discretion.

5 (d) "Business dealings" means any transaction involving the sale,
6 purchase, rental, disposition or exchange of any goods, services or
7 property, and any performance of or litigation with respect to any of
8 the foregoing, but shall not include any transaction involving the resi-
9 dence of any candidate for any advisory board created pursuant to this
10 chapter or of any member of such board, or any ministerial matter.

11 (e) "City" means the city of Staten Island and includes an agency of
12 the city.

13 (f) "Elected official" means a person holding office as mayor, comp-
14 troller, public advocate, borough president or member of the council.

15 (g) "Firm" means a sole proprietorship, joint venture, partnership,
16 corporation or any other form of enterprise, but shall not include a
17 public benefit corporation or local development corporation.

18 (h) "Interest" means an ownership interest in a firm or a position
19 with a firm.

20 (i) "Ministerial matter" means an administrative act that is carried
21 out in a prescribed manner and which does not involve substantial
22 personal discretion.

23 (j) "Ownership interest" means an interest in a firm that is held by a
24 candidate for any advisory board created pursuant to this chapter, or by
25 a member of such board, or by the spouse, domestic partner, or unemanci-
26 pated child of such candidate or member, which exceeds five percent of
27 the firm or an investment of twenty-five thousand dollars in cash or
28 other form of commitment, whichever is less, or five percent or twenty-
29 five thousand dollars of the firm's indebtedness, whichever is less, and
30 any lesser interest in a firm when such candidate or member, or such
31 spouse, domestic partner, or unemancipated child, exercises managerial
32 control or responsibility regarding any such firm, but shall not include
33 interests held in any pension plan, deferred compensation plan or mutual
34 fund, the investments of which are not controlled by such candidate or
35 member, or by such spouse, domestic partner, or unemancipated child, or
36 in any blind trust that holds or acquires an ownership interest.

37 (k) "Position" means a position in a firm, such as an officer, direc-
38 tor, trustee, employee or any management position, or as an attorney,
39 agent, broker or consultant to the firm, which does not constitute an
40 ownership interest in the firm.

41 (l) "Public servant" means all officials, officers and employees of
42 the city, including members of community boards and members of advisory
43 committees, except unpaid members of advisory committees shall not be
44 public servants.

45 (m) "Spouse" means a husband or wife of a candidate for any advisory
46 board created pursuant to this chapter or of a member of such board who
47 is not legally separated from such candidate or member.

48 (n) "Unemancipated child" means any son, daughter, step-son or step-
49 daughter who is under the age of eighteen, unmarried and living in the
50 household of a candidate for any advisory board created pursuant to this
51 chapter or of the member of such board.

52 Chapter 7

53 REGULATIONS SUBMITTED TO COUNCIL AND ENFORCEMENT

1 § 16-323 Rules submitted to council. Rules adopted by the commission-
2 er pursuant to this chapter shall become effective only after filing and
3 publication as prescribed by chapter forty-five of the charter of the
4 preceding municipality. In addition, notwithstanding the provisions of
5 chapter forty-five of such charter, prior to adoption by the commission-
6 er of a final rule pursuant to subdivision e of section one thousand
7 forty-three of such charter, and after consideration of relevant
8 comments presented pursuant to subdivision d of such section, the
9 commissioner shall submit to the council the text of the final rule
10 proposed to be published in the city record. The council shall have
11 thirty days from the date of such submission to comment upon such text.
12 The final rule may include revisions in response to comments from the
13 council and shall not be published in the city record before the thir-
14 ty-first day after such submission, unless the speaker of the council
15 authorizes earlier publication.

16 § 16-324 Enforcement. 1. Subject to the provisions of subdivision two
17 of this section, any person who violates this chapter, except section
18 16-306.1 of this title, subdivision seven of section 16-308 of this
19 title, section 16-310.1 of this title or section 16-329 of the code of
20 the preceding municipality, or any rule promulgated pursuant thereto,
21 shall be liable for a civil penalty recoverable in a civil action
22 brought in the name of the commissioner or in a proceeding returnable
23 before the environmental control board, as follows:

24 a. For residential buildings containing fewer than nine dwelling
25 units, the civil penalty shall be in an amount of twenty-five dollars
26 for the first violation, fifty dollars for the second violation commit-
27 ted on a different day within a period of twelve months, and one hundred
28 dollars for the third and each subsequent violation committed on a
29 different day within a period of twelve months, provided that the court
30 before which such civil action is brought or such board may waive the
31 penalty for the first violation upon a showing of good cause.

32 b. For residential buildings containing nine or more dwelling units
33 and commercial, manufacturing or industrial buildings, the civil penalty
34 shall be in an amount of one hundred dollars for the first violation,
35 two hundred dollars for the second violation committed on a different
36 day within a period of twelve months, and four hundred dollars for the
37 third and each subsequent violation committed on a different day within
38 a period of twelve months, provided that the court before which such
39 civil action is brought or such board may waive the penalty for the
40 first violation upon a showing of good cause. The owner, net lessee or
41 person in charge of any residential building of nine or more dwelling
42 units or a commercial, manufacturing or industrial building with respect
43 to which four or more violations were committed on different days within
44 a period of six months shall be classified as a persistent violator.

45 c. For persistent violators only, each container or bag containing
46 solid waste that has not been source separated or placed out for
47 collection in accordance with the rules promulgated by the commissioner
48 pursuant to this chapter shall constitute a separate violation, provided
49 that no more than twenty separate violations are issued on a per bag or
50 per container basis during any twenty-four hour period. Before issuing
51 any such notices of violation to a persistent violator on a per bag or
52 per container basis, the commissioner shall give such violator a reason-
53 able opportunity to correct the condition constituting the violation.

54 d. There shall be a rebuttable presumption that the number of dwelling
55 units designated on a notice of violation issued pursuant to this
56 section reflects the number of dwelling units in the residential build-

1 ing for which the notice of violation was issued. Where such presumption
2 is rebutted, the number of dwelling units on such notice of violation
3 shall be deemed modified accordingly, and in no event shall such notice
4 of violation be dismissed solely on the ground that the number of dwell-
5 ing units on the original notice of violation was incorrectly stated.

6 e. The commissioner or the commissioner's designee shall establish a
7 recycling training program for owners or employees of residential build-
8 ings of nine or more dwelling units for which at least three notices of
9 violation for failing to properly source separate designated recyclable
10 material have been issued within a twelve-month period and which the
11 commissioner determines to be in need of recycling training. Such
12 training program shall require the building owner, or an employee who is
13 primarily responsible for waste disposal or janitorial services for any
14 such building, to attend a training program established by the commis-
15 sioner or the commissioner's designee designed to improve recycling
16 practices at such building and a fee may be imposed on any owner or
17 employee who participates in such training program. Such training
18 program may be held in any location designated by the commissioner or
19 the commissioner's designee, including, in order to facilitate tenant
20 participation, at such building.

21 2. Any person who violates subdivision seven of section 16-308 of this
22 title or any rules promulgated pursuant thereto shall be liable for a
23 civil penalty in the amount of two hundred fifty dollars for the first
24 violation, five hundred dollars for the second violation committed with-
25 in a twelve-month period, and one thousand dollars for the third and
26 each subsequent violation committed within a twelve-month period.

27 3. Any owner or other person responsible for a publicly accessible
28 textile drop-off bin who violates subdivision two of section 16-310.1 of
29 this title shall be liable as follows:

30 a. In the event that a publicly accessible textile drop-off bin is
31 impermissibly placed on city property, or property maintained by the
32 city, or on any public sidewalk or roadway, the owner of the publicly
33 accessible textile drop-off bin, if the address of such owner is ascer-
34 tainable, shall be notified by the department by certified mail, return
35 receipt requested, that such publicly accessible textile drop-off bin
36 must be removed within thirty days from the mailing of such notice. A
37 copy of such notice, regardless of whether the address of such owner or
38 other responsible person is ascertainable, shall also be affixed to the
39 publicly accessible textile drop-off bin. This notice shall state that
40 if the address of the owner or other responsible person is not ascer-
41 tainable and notice is not mailed by the department, such publicly
42 accessible textile drop-off bin shall be removed within thirty days from
43 the affixing of such notice. This notice shall also state that the fail-
44 ure to remove the publicly accessible textile drop-off bin within the
45 designated time period will result in the removal and disposal of the
46 publicly accessible textile drop-off bin by the department. This notice
47 shall also state that if the owner or other responsible person objects
48 to removal on the grounds that the publicly accessible textile drop-off
49 bin is not on city property, or property maintained by the city, or on
50 any public sidewalk or roadway, such owner or other responsible person
51 may send written objection to the department at the address indicated on
52 the notice within twenty days from the mailing of such notice or, if the
53 address of such owner or other responsible person is not ascertainable
54 and notice is not mailed by the department, within twenty days from the
55 affixing of such notice, with proof that the publicly accessible textile
56 drop-off bin is not on city property, or property maintained by the

1 city, or on any public sidewalk or roadway. Proof that the publicly
2 accessible textile drop-off bin is not on city property, or property
3 maintained by the city, or on any public sidewalk or roadway shall
4 include, but not be limited to, a survey of the property prepared by a
5 licensed surveyor that is certified by the record owner of such proper-
6 ty.

7 b. Any owner or other person responsible for an impermissibly placed
8 publicly accessible textile drop-off bin that fails to respond within
9 twenty days of receipt of such notice under paragraph a of this subdivi-
10 sion or otherwise fails to establish that the publicly accessible
11 textile drop-off bin is not on city property, or property maintained by
12 the city, or on any public sidewalk or roadway pursuant to paragraph a
13 of this subdivision, shall be liable for a civil penalty in the amount
14 of one hundred dollars, recoverable in a proceeding returnable before
15 the environmental control board.

16 4. Any notice of violation or notice of hearing for a violation issued
17 to the owner, net lessee or person in charge of a premises or to a food
18 service establishment, mobile food commissary, store, or manufacturer,
19 as those terms are defined in section 16-329 of the code of the preced-
20 ing municipality, at which or by whom a violation of this chapter or any
21 rule promulgated pursuant thereto is alleged to have occurred or to have
22 been committed shall be served by delivering a copy of the notice there-
23 of at the address maintained in the records of the department of housing
24 preservation and development, the department of finance, or the depart-
25 ment of health and mental hygiene. The notice of violation or notice of
26 hearing may be served by regular mail or in accordance with section one
27 thousand forty-nine-a of the charter of the preceding municipality or,
28 if such notice is served by an agency other than the department, in
29 accordance with the rules of such agency.

30 5. a. Any covered establishment that violates section 16-306.1 of this
31 title or rules of the department, the department of health and mental
32 hygiene, or the department of consumer and worker protection promulgated
33 pursuant thereto shall be liable for a civil penalty recoverable in a
34 civil action brought in the name of the commissioner or the commissioner
35 of health and mental hygiene, or the commissioner of consumer and worker
36 protection, or in a proceeding returnable before any tribunal estab-
37 lished within the office of administrative trials and hearings in the
38 amount of two hundred fifty dollars for the first violation, five
39 hundred dollars for the second violation committed on a different day
40 within a period of twelve months, and one thousand dollars for the third
41 and each subsequent violation committed on different days within a peri-
42 od of twelve months, except that the department, the department of
43 health and mental hygiene, and the department of consumer and worker
44 protection shall not issue a notice of violation, but shall issue a
45 warning, for any violation by a designated covered establishment that
46 occurs during the first twelve months after the commissioner designates
47 such covered establishment pursuant to subdivision two of section
48 16-306.1 of this title.

49 b. Any transfer station that violates section 16-306.1 of this title
50 or rules of the department promulgated pursuant thereto shall be liable
51 for a civil penalty recoverable in a civil action brought in the name of
52 the commissioner or in a proceeding returnable before the environmental
53 control board in the amount of two hundred fifty dollars for the first
54 violation, five hundred dollars for the second violation committed on a
55 different day within a period of twelve months, and one thousand dollars
56 for the third and each subsequent violation committed on different days

1 within a period of twelve months, except that the department shall not
2 issue a notice of violation, but shall issue a warning, for any
3 violation by a designated covered establishment that occurs during the
4 first twelve months after the commissioner designates such covered
5 establishment pursuant to subdivision two of section 16-306.1 of this
6 title.

7 c. Any private carter that violates section 16-306.1 of this title or
8 rules of the business integrity commission promulgated pursuant thereto
9 shall be liable for a civil penalty recoverable in a civil action
10 brought in the name of the chair of the business integrity commission,
11 or in a proceeding brought by the chair of the business integrity
12 commission held in accordance with title sixteen-A of the code of the
13 preceding municipality, except that the chair of the business integrity
14 commission shall not issue a notice of violation, but shall issue a
15 warning, for any violation by a designated covered establishment that
16 occurs during the first twelve months after the commissioner designates
17 such covered establishment pursuant to subdivision two of section
18 16-306.1 of this title.

19 6. Any person who violates section 16-329 of the code of the preceding
20 municipality or any rule promulgated pursuant thereto shall be liable
21 for a civil penalty recoverable in a civil action brought in the name of
22 the commissioner, the commissioner of health and mental hygiene or the
23 commissioner of consumer and worker protection, or in a proceeding
24 before the environmental control board, or any tribunal established
25 within the office of administrative trials and hearings in the amount of
26 one hundred fifty dollars for the first violation, two hundred fifty
27 dollars for the second violation committed on a different day within a
28 period of twelve months, and five hundred dollars for the third and each
29 subsequent violation committed on different days within a period of
30 twelve months.

31 Title 17 - Health

32 § 17-101 Definitions. As used in this title:

33 1. "Board" shall mean the board of health.

34 2. "Commissioner" means the commissioner of the department of health.

35 3. "Department" means the department of health.

36 4. "Health code" means the health code of the city of Staten Island.

37 § 17-102 Department; commissioner. 1. There shall be a department of
38 health, the head of which shall be the commissioner of health.

39 2. The commissioner, with concurrence of the board of health, may
40 adopt a seal for use in the authentication of the orders, proceedings
41 and commissions of the department.

42 3. The commissioner shall be appointed by the mayor and shall be a
43 doctor of medicine and a holder of a degree of master of public health
44 or a degree of master of business administration with concentration in
45 the health field or a degree of master of public administration with
46 concentration in the health field or the equivalent of any one of the
47 specified foregoing degrees received from a college or university and
48 have had at least five years' experience either in public health or
49 administration or in college or university public health teaching or
50 both.

51 § 17-103 Board of health. 1. There shall be in the department a board
52 of health, the chair of which shall be the commissioner. In addition to
53 the chairperson the board shall also consist of four members, two of
54 whom shall be doctors of medicine who shall each have had not less than

1 ten years' experience in any or all of the following: clinical medicine,
2 public health administration or college or university public health
3 teaching. The other two members need not be physicians.

4 2. The four members other than the chairperson shall serve without
5 compensation and shall be appointed by the mayor, each for a term of
6 eight years. In the case of a vacancy, the mayor shall appoint a member
7 to serve for the unexpired term.

8 3. The commissioner shall designate employees of the department as
9 necessary to service the board including an employee designated by the
10 commissioner to serve as the secretary of the board.

11 4. A member of the board of health, other than the chair, may be
12 removed by the mayor on proof of official misconduct or of negligence in
13 official duties or of conduct in any manner connected with his or her
14 official duties, or of mental or physical inability to perform his or
15 her duties. Prior to removal of a board member for any of the reasons
16 stated above, the member shall be given a copy of the charges against
17 him or her and shall be entitled to a hearing before the mayor and to
18 assistance of counsel at such hearing.

19 § 17-104 Powers and duties of commissioner. 1. The commissioner
20 shall:

21 (a) have all the powers and duties vested in him or her or in the
22 department by this title, except for those vested by law in the board of
23 health or the chief medical examiner.

24 (b) prepare and submit to appropriate governmental authorities short
25 term, intermediate and long range plans and programs designed to meet
26 the needs of the city including the needs for construction and operation
27 of medical and health care facilities, except that the commissioner may
28 not construct or operate a new medical facility until the health systems
29 agency having jurisdiction over that institution has received a copy of
30 the application filed with the commissioner, in the case of private
31 institutions, or all information in form and detail as the health
32 systems agency shall require, in the case of institutions of the city of
33 Staten Island, and it shall have given the commissioner a written deci-
34 sion of approval or disapproval; and

35 (c) not be considered bound by the decision given as described above,
36 but he or she shall not approve any construction, addition or modifica-
37 tion contrary to the health systems agency without first holding a
38 public hearing.

39 2. In reaching decisions pursuant to this section, the commissioner
40 and the health systems agency shall consider:

41 (a) the public need for the existence of the new institution or the
42 construction, addition or modification of an existing institution at the
43 time and place and under the circumstances proposed;

44 (b) the character, competence and standing in the community of the
45 owners and licensees, in the case of private institutions;

46 (c) the financial resources of the institution and its sources of
47 future revenue;

48 (d) the fitness and adequacy of the premises, and equipment, person-
49 nel and standards of care to be used in the operation of the proposed
50 institution; and

51 (e) such other matters as each of them considers pertinent.

52 3. The commissioner may compel the attendance of witnesses in any
53 matter or proceeding before the commissioner.

54 4. The commissioner may assess any penalty prescribed for a violation
55 of or a failure to comply with any provision of this title or any other
56 lawful notice, order or regulation pursuant thereto, which penalty may

1 be assessed, although not to exceed one thousand dollars, after a hear-
2 ing or an opportunity to be heard.

3 § 17-105 Functions, powers and duties of the department. Except as
4 otherwise provided by law, the department shall have jurisdiction to
5 regulate all matters affecting health in the city and to perform all
6 those functions and operations performed by the city that relate to the
7 health of the people of the city including, but not limited to, the
8 following:

9 1. enforce all provisions of law applicable in the area under the
10 jurisdiction of the department for the preservation of human life; the
11 care, promotion and protection of health and to the necessary health
12 supervision of the purity and wholesomeness of the water supply. The
13 department shall also maintain and operate office health centers, health
14 stations or other facilities which may be required for the preservation
15 of health and the care of the sick;

16 2. exercise its functions, powers and duties in the area extending
17 over the city, the waters adjacent thereto, within the jurisdiction of
18 the city and within the quarantine limits established by law;

19 3. receive and expend funds made available for public health
20 purposes;

21 4. supervise and control the registration of births, fetal deaths and
22 deaths;

23 5. engage in and promote health research for the purpose of improving
24 the quality of medical and health care. In conducting such research the
25 department may conduct medical audits, receive reports on forms
26 prescribed by the department and any information received by the depart-
27 ment with regard to such research shall be kept strictly confidential,
28 used solely for medical or scientific research purposes or for the
29 improvement of the quality of medical care;

30 6. supervise the reporting and control of communicable and chronic
31 diseases and conditions hazardous to life and health; and exercise
32 control over and supervise the abatement of nuisances affecting the
33 public health;

34 7. produce, standardize and distribute certain diagnostic, preventa-
35 tive and therapeutic products and conduct laboratory examinations for
36 the diagnosis, prevention and control of disease;

37 8. promote or provide education in the prevention and control of
38 disease;

39 9. promote or provide diagnostic and therapeutic services for mater-
40 nity and child health, family planning, communicable disease, medical
41 rehabilitation, narcotics addiction and other diseases and conditions
42 affecting public health;

43 10. promote and provide medical and health services for school chil-
44 dren and the ambulant sick and needy persons of the city;

45 11. promote and provide medical and health services for the incarcer-
46 ated individuals of prisons maintained and operated by the city;

47 12. maintain and operate public health centers and clinics as shall
48 be established in the department;

49 13. prior to the sale, closing, abandonment or transfer of a city
50 hospital, hold a public hearing regarding such proposal; and publish
51 notice of such hearing in such daily newspaper published in the city as
52 selected by the commissioner, such publication to take place not less
53 than ten days nor more than thirty days prior to the date fixed for the
54 hearing;

55 14. analyze and monitor hospitals, clinics, nursing homes and homes
56 for the aged, and analyze, evaluate, supervise and regulate clinical

1 laboratories, blood banks and related facilities providing medical
2 services;

3 15. supervise and regulate the public health aspects of water supply,
4 sewage disposal and water pollution;

5 16. supervise and regulate the public health aspects of the
6 production, processing and distribution of milk, cream and milk
7 products;

8 17. supervise and regulate the public health aspects of the food and
9 drug supply of the city and other businesses or activities affecting
10 public health in the city;

11 18. supervise and regulate the public health aspects of ionizing
12 radiation, handling and disposal of radioactive wastes and the activ-
13 ities within the city affecting radioactive materials, excluding special
14 nuclear materials in quantities sufficient to form a critical mass; and

15 19. supervise and regulate the removal, transportation and disposal of
16 human remains.

17 § 17-106 Chief medical examiner. 1. There shall be in the department
18 an independent office of chief medical examiner, the head of which shall
19 be the chief medical examiner.

20 2. The chief medical examiner shall be appointed by the mayor from the
21 classified civil service and shall be a doctor of medicine and a skilled
22 pathologist and microscopist. The mayor may remove the chief medical
23 examiner upon filing in the office of the personnel director and serving
24 upon the examiner his or her reasons therefor and allowing the officer
25 an opportunity of making a public explanation.

26 3. The commissioner, with respect to the office of chief medical exam-
27 iner, shall exercise certain powers and duties pursuant to this section,
28 but he or she shall not interfere with performance by the chief medical
29 examiner or his or her office.

30 4. The chief medical examiner may appoint and remove such deputy chief
31 medical examiners, assistant medical examiners, junior medical examiners,
32 medical investigators, scientific experts and other officers or
33 employees as may be provided for in the budget.

34 All assistant, associate, deputy and junior medical examiners shall
35 possess the same basic qualifications as the chief medical examiner. The
36 medical investigators shall be physicians duly licensed to practice
37 medicine in the state of New York.

38 5. The office of chief medical examiner shall be kept open every day
39 in the year, including Sundays and all legal holidays, and a clerk shall
40 be in attendance at all times during the day and night.

41 6. The chief and all deputy chief, associate, assistant and junior
42 medical examiners and all investigators may administer oaths, take affi-
43 davits, proofs and examinations.

44 7. The chief medical examiner shall have such powers and duties as may
45 be provided by law with respect to bodies of persons dying from criminal
46 violence, casualty, suicide, suddenly when in apparent good health, when
47 unattended by a physician, in a correctional facility or in any suspi-
48 cious or unusual manner or where an application is made for a permit for
49 cremation of the body.

50 8. The chief medical examiner shall keep full and complete records. He
51 or she shall promptly deliver, to the district attorney, copies of all
52 records relating to every death in which, in the opinion of the chief
53 medical examiner, there is any indication of criminality. Such records
54 shall not be open to public inspection.

55 § 17-107 Health code. 1. The health code which is in force in the
56 preceding municipality on the date and time which this title takes

1 effect and all existing provisions of the health code, including penal-
2 ties affixed for violations, shall continue to be binding and in full
3 force, except as amended from time to time.

4 2. The board of health may add to, alter, amend or replace any part of
5 the health code, and may provide for the enforcement of the health code
6 or any orders made by the commissioner. The board of health shall
7 prescribe in the health code all matters and subjects to which the power
8 and authority of the department extends.

9 3. Any violation of the health code shall be treated and punished as a
10 misdemeanor.

11 § 17-108 Temporary hospitals during epidemic. The board of health,
12 during prevalence of an epidemic or in the presence of great and immi-
13 nent peril to the public health, may take possession of any buildings in
14 the city for temporary hospitals and shall pay a just compensation for
15 any private property so taken. Such temporary hospitals shall be under
16 the control of the commissioner.

17 § 17-109 Permits. The board of health may grant, suspend or revoke
18 permits for businesses and other matters in respect to any subject dealt
19 with in the health code or regulated by the department and the board may
20 prescribe reasonable fees for the issuance of said permits.

21 § 17-110 Declaration of imminent peril. In the presence of great and
22 imminent peril to public health, the board of health shall take such
23 measures and order the department of health to do such acts beyond those
24 duly provided for, in the interests of preservation of the public
25 health. No expenditure shall be incurred in the exercise of such
26 extraordinary power, unless provision is made therefor in the budget or
27 unless such expenditures are financed pursuant to section 107.00 or
28 section 29.00 of the local finance law. Such peril shall exist when and
29 for such period of time as the board of health and the mayor declare.

30 § 17-111 Right of entry. The commissioner and his or her officers may,
31 pursuant to a search warrant when required by law, enter, examine and
32 inspect all vessels, premises, grounds, structures, buildings and under-
33 ground passages for compliance with the provisions of law enforced by
34 the department.

35 § 17-112 Acceptance of private funds. No grants, gifts, devises,
36 legacies or bequests made to the city shall be accepted except with the
37 approval of the commissioner.

38 Title 18 - Parks

39 § 18-101 Definitions. As used in this title:

40 1. "Commissioner" shall mean the commissioner of the department of
41 parks, recreation and cultural affairs.

42 2. "Department" shall mean the department of parks, recreation and
43 cultural affairs.

44 § 18-102 Commissioner. The head of the department of parks, recre-
45 ation and cultural affairs shall be the commissioner.

46 § 18-103 Powers and duties of commissioner. Except with respect to the
47 functions of the board of education, the commissioner shall have the
48 power and it shall be his or her duty:

49 1. With respect to parks:

50 (a) to manage and care for all parks, squares and public places, the
51 sidewalks immediately adjoining the same and all playgrounds, playground
52 fixtures and other recreation properties, except those within the juris-
53 diction of the board of education;

1 (b) to prepare for the establishment and improvement of a park system
2 for the city with regard to proper connections with the systems of
3 federal, state and county parks and recreation areas in the city and
4 counties adjacent to the city; and

5 (c) to maintain the beauty and utility of all parks, squares, public
6 places, playgrounds and other recreational properties.

7 2. With respect to recreation:

8 (a) to plan, acquire, construct, improve and merge facilities for the
9 recreation of the public;

10 (b) to plan, develop, conduct and supervise recreation programs for
11 the public;

12 (c) to review and coordinate recreation activities and programs and
13 facilities conducted by agencies of the city and the budget estimates
14 submitted by such other agencies for such activities and make such
15 recommendations to the mayor; and

16 (d) to undertake, subject to the approval of the mayor, and to enter
17 into arrangements with other agencies of the city, state or federal
18 government and to recommend to the mayor such arrangements with private,
19 voluntary or commercial agencies, subject to the law, for the perform-
20 ance of any recreation functions conferred upon the department.

21 3. With respect to cultural affairs:

22 (a) to plan, acquire, design, construct, improve and manage facilities
23 for the conduct of cultural activities by the city and, to the extent
24 possible, to use the resources of other agencies to perform design and
25 planning functions subject to the approval of such agencies;

26 (b) to plan, develop, conduct and supervise such cultural activities;
27 and

28 (c) to foster coordination among city, state and federal agencies,
29 other organizations and institutions with respect to cultural activities
30 in the city.

31 § 18-201 Art commission. There shall be an art commission. All members
32 of the commission shall serve without compensation. The mayor shall
33 appoint and fill vacancies. The chairperson shall be the commissioner of
34 parks, recreation and youth services. The commissioner shall accede to
35 the rights, powers and duties within the city of Staten Island of the
36 preceding arts commission of the city of New York.

37 Title 19 - Transportation

38 § 19-102 Commissioner. There shall be a department of transportation
39 the head of which shall be the commissioner of transportation.

40 § 19-103 Powers and duties of commissioner. The commissioner shall
41 have control over and be responsible for all the functions and oper-
42 ations of the city relating to transportation including, without limita-
43 tion, parking and traffic operations, highway operations, ferries and
44 related facilities and mass transportation facilities.

45 § 19-104 Parking and traffic operations. 1. The commissioner shall
46 make rules and regulations for the conduct of vehicular and pedestrian
47 traffic in the streets, squares, avenues, highways and parkways of the
48 city. Violation of such rules shall be a traffic infraction triable by a
49 judge in criminal court and also may be adjudicated pursuant to this
50 title or pursuant to articles two-A and two-B of the vehicle and traffic
51 law.

52 2. In an emergency, the police commissioner may suspend for a period
53 of forty-eight hours the provision of any rule or procedure and shall
54 immediately notify the commissioner of such suspension.

1 3. In order to expedite the movement of traffic or to safeguard pedes-
2 trians or property, a police officer may order a person to disregard any
3 traffic signal or any regulation.

4 4. The commissioner shall establish, determine, control, install and
5 maintain the type, design, size and location of any and all signs,
6 signals and other devices indicating street names and other public plac-
7 es, and for guiding, directing or otherwise regulating vehicular and
8 pedestrian traffic.

9 5. The commissioner shall make recommendations to the mayor as to the
10 design and location of lighting devices, poles and fixtures, including
11 intensity of illumination of streets and highways.

12 6. The commissioner shall prepare and submit to the mayor a proposed,
13 comprehensive city traffic plan and the commissioner shall collect and
14 compile traffic data, prepare engineering studies and surveys in regard
15 to vehicular and pedestrian traffic and submit detailed reports to the
16 mayor regarding such data. The commissioner shall also have authority
17 to: (a) submit to the mayor from time to time recommendations and
18 proposals for consideration by the mayor and other city agencies in
19 regard to methods of ameliorating adverse traffic conditions which
20 cannot be remedied by traffic regulations; (b) amend existing regu-
21 lations and rules of any city agency which may affect traffic conditions
22 in the city; (c) propose legislation which may be necessary to imple-
23 ment such proposals; and (d) recommend improvements of existing
24 streets, locations of new streets, highways, parking garages, public
25 parking areas, offstreet loading facilities and other related matters.

26 7. The commissioner shall coordinate efforts of and consider reports
27 of public and private agencies and civic groups with regard to their
28 suggestions on traffic control in the city. The commissioner shall
29 prepare analyses of traffic accidents with a view to determining their
30 causes and means for prevention and shall carry on educational activ-
31 ities for the purpose of promoting traffic safety in the city.

32 8. The commissioner shall establish parking meter zones for on-street
33 and off-street parking; determine type, size and location of parking
34 meters; and fix the fees for parking in public parking areas, except
35 that parking meter zones for both on-street and off-street parking shall
36 not apply to vehicles operated by disabled persons displaying special
37 vehicle identification cards issued by the commissioner.

38 9. The commissioner shall collect fees, fines and penalties for
39 violation of parking rules and shall keep all monies in a special fund
40 to be known as the "traffic improvement fund". The revenues in this
41 special fund shall be used, upon authorization by the council for
42 payment of all costs of purchase, rental, engineering, installation,
43 operation, maintenance and repair of parking meters, the collection of
44 coins, the enforcement of rules pertaining to parking, the collection of
45 fines and penalties for rules violations or the payment of interest on,
46 amortization of, or payment of any indebtedness contracted by the city
47 in connection with the installation and operation of parking meters. Any
48 revenues remaining after such payments are made shall be used for capi-
49 tal and other expenditures to ameliorate traffic conditions of the city.

50 10. The commissioner, in conjunction with the commissioner of finance,
51 may enter into agreements with not more than two financing agencies to
52 provide for the acceptance by the city of credit cards as an alternate
53 means of payment of fines or fees incurred due to violation of any law,
54 rule or regulation with regard to parking of a vehicle.

55 11. The commissioner shall have the power, concurrently with the
56 police department, to enforce laws, rules and regulations with regard to

1 all movement and conduct of vehicular and pedestrian traffic. The
2 commissioner may employ, hire and retain officers or employees for the
3 purpose of enforcing laws, rules and regulations with regard to regulat-
4 ing and controlling vehicular parking and movement of pedestrian and
5 vehicular traffic. Such officers or agents are authorized to issue and
6 serve tickets, summonses and complaints for traffic infractions.

7 12. The commissioner shall issue, upon application, a special vehicle
8 identification permit to a Staten Island resident certified by the
9 department of health as suffering from a permanent disability seriously
10 impairing mobility, non-residents similarly certified may obtain vehicle
11 identification for purposes of transportation to a school or place of
12 employment in city. All applicants for such permit must possess an oper-
13 ator's or chauffeur's license with any restrictions indicating special
14 restrictions, devices or equipment required for operation of the vehi-
15 cle.

16 § 19-105 Highway operations. The commissioner shall have charge and
17 control of the following functions relating to the construction, mainte-
18 nance and repair of public roads, streets, highways, parkways, bridges
19 and tunnels: (i) regulating, grading, curbing, flagging and guttering of
20 streets, including marginal streets, and the laying of crosswalks; (ii)
21 designing, constructing, resurfacing and repairing all public roads,
22 streets, highways and parkways; (iii) the relaying of all pavement
23 removed for any cause; (iv) the filling of sunken lots, fencing vacant
24 lots, digging down of lots and the licensing of vaults under sidewalks;
25 (v) regulation of the use and transmission of gas, electricity, pneumat-
26 ic power and steam for all purposes in, upon, across, over and under all
27 streets, roads, avenues, parks and all public places; regulation of the
28 construction of electric mains, conduits, conductors and subways in any
29 streets, roads, avenues, parks or public places and the issuance of
30 permits to builders and others to use or open a street; and to open the
31 same for the purpose of carrying on the business of transmitting,
32 conducting, using and selling gas, electricity or steam or for the
33 service of pneumatic tubes, provided, however, this section is not to be
34 seen as to grant permission to open or use the streets except by persons
35 or corporations otherwise duly authorized to carry on such business
36 specified above; (vi) construction, alteration and maintenance of all
37 bridges and tunnels. The commissioner shall issue a report to mayor,
38 city council and city residents about the condition of the bridges and
39 tunnels operated and maintained by the department with such report due
40 on March first, as of December thirty-first of preceding calendar year.
41 The report shall include a description of all capital and revenue budget
42 funds appropriated for rehabilitation and maintenance of bridges and
43 tunnels as well as the program developed by the commissioner for the
44 maintenance of all bridges and tunnels in the city of Staten Island;
45 (vii) removal of encroachments on public roads, streets, highways and
46 parkways, with the exception of weed removal, grass cutting and clipping
47 and other horticultural operations which are to be executed by the parks
48 department, and de-icing and snow removal operations are to be carried
49 out by the department of sanitation; (viii) clearing, grubbing, grading,
50 filling or excavating of vacant lots and other land areas; (ix) instal-
51 lation of metal chain link fences or barriers on overpasses, footbridg-
52 es, bridges or walkways; and (x) designing, constructing and maintaining
53 a lighting system for streets, highways, parks and public places in the
54 city.

55 § 19-106 Ferries and related facilities. The commissioner shall main-
56 tain and operate the ferries of the city. The commissioner shall be

1 responsible for designing, constructing, maintaining or controlling all
2 ferry boats, ferry houses, ferry terminals and equipment; all wharf
3 property and roads or streets adjacent to such wharves, ferry houses or
4 terminals, including parking sites and related facilities. The commis-
5 sioner shall have charge and control of all marine operations within the
6 city and the power to regulate public and private ferry operations orig-
7 inating or terminating in the city. The commissioner shall establish
8 tours of ferry facilities and their related operations as well as tours
9 of the New York harbor at fees to be established by the commissioner and
10 may publicize and advertise the same. The commissioner shall construct,
11 operate and maintain marinas and public boat launching ramps and related
12 ferry facilities and collect fees for the use of such facilities. Fees
13 collected are to be deposited in a special fund for continued mainte-
14 nance, operation or reconstruction of public marine facilities.

15 § 19-107 Mass transportation facilities. The commissioner shall
16 prepare or review plans and recommendations for the nature,
17 construction, location, operation and financing of roads, highways,
18 bridges, tunnels, railroads or other facilities for mass transportation
19 for use, in whole or in part, within the city, whether or not the funds
20 provided for such facilities are derived from the city treasury. The
21 commissioner shall develop and coordinate planning and programming for
22 all forms of mass transportation within Staten Island, whether or not
23 transportation is within the sole operating jurisdiction of Staten
24 Island. The commissioner shall make recommendations to the mayor, the
25 Metropolitan Transportation Authority or any of its subsidiaries, the
26 Port Authority of New York and New Jersey and other city, state and
27 federal agencies concerning the mass transit needs of the city of Staten
28 Island.

29 § 19-108 Duties and obligations of a property owner with regard to
30 sidewalks, fencing or filling of vacant lots or cutting down raised
31 lots. The owner of any property, at his or her own cost shall:

32 1. Install, reconstruct, repave and repair the sidewalk in front of or
33 abutting such property, to include intersection quadrant in the case of
34 corner property; and

35 2. Fence any vacant lot comprising all or part of his or her property
36 and fill any sunken lots on such property or cut down any raised lot or
37 lots comprising all or part of the property whenever the transportation
38 department shall so order. In the event a property owner fails to comply
39 with such order or the provisions of this section, the transportation
40 department may have the work performed at the expense of the owner.

41 § 19-109 Right of entry. The commissioner may enter public or private
42 property for the purpose of making surveys, borings or other investi-
43 gations necessary for the performance of department duties. Refusal to
44 permit such entry shall be triable by the judge in a criminal court of
45 Staten Island.

46

Title 20 - Consumer Affairs

47 § 20-102 Definitions. Wherever used in this title:

48 1. "Commissioner" shall mean the commissioner of consumer and worker
49 protection.

50 2. "Department" shall mean the department of consumer and worker
51 protection.

52 3. "License" shall mean an authorization by the department of consumer
53 and worker protection to carry on various activities within its juris-
54 diction, which may take the form of a license, permit, registration,

1 certification or such other form as is designated under law, regulation
2 or rule.

3 4. "Organization" shall mean a business entity, including but not
4 limited to a corporation, trust, estate, partnership, cooperative, asso-
5 ciation, firm, club or society.

6 5. "Person" shall mean a natural person or an organization.

7 6. "Trade name" shall mean that name under which an organization or
8 person solicits, engages in, conducts or transacts a business or activ-
9 ity.

10 § 20-103 Powers of the commissioner. 1. The commissioner shall plan,
11 make recommendations, conduct research and develop programs for consumer
12 and worker education and protection, facilitate the exchange of informa-
13 tion in consultation with agencies, federal and state officials, commer-
14 cial interests, private groups and coordinate the consumer and worker
15 protection activities of other city agencies.

16 2. The commissioner shall enforce all laws in relations to weights and
17 measures.

18 3. The commissioner shall have control of granting, issuing, trans-
19 ferring, renewing, revoking, suspending and cancelling of all licenses
20 and permits, except in the cases with respect to which any of said
21 powers are conferred on other persons or agency by laws, and shall
22 collect all fees for licenses.

23 All licenses or permits in effect on the date of establishment shall
24 be continued until their date of expiration or sixty days, whichever
25 shall be longer. Any license or permit expiring within a thirty-day
26 period prior to the date of establishment shall be continued for a peri-
27 od of sixty days.

28 A licensee or permittee must notify and register with the department
29 if the license or permit is to extend beyond sixty days of the date of
30 establishment.

31 4. The commissioner shall enforce all laws relating to advertising and
32 offering for sale and the sale of all commodities, goods, wares and
33 services; in addition he or she shall receive complaints and initiate
34 his or her own investigations and take appropriate action, including
35 referral to a federal or state agency.

36 5. The commissioner shall be authorized to hold public and private
37 hearings, administer oaths, take testimony, serve subpoenas, receive
38 evidence, and to receive, administer, pay over and distribute monies
39 collected in and as a result of actions brought for violations of laws
40 relating to deceptive or unconscionable trade practices.

41 Title 21 - Human Services

42 § 21-102 Commissioner. There shall be a department of human services
43 the head of which shall be the commissioner of human services.

44 § 21-103 Powers and duties. The commissioner shall have the powers
45 and perform the duties of a commissioner of human services under the
46 social services law, provided that no form of outdoor relief shall be
47 dispensed by the city except under the provisions of a state or local
48 law which shall specifically provide the method, manner and conditions
49 of dispensing the same.

50 § 21-104 Public institutions under the commissioner. The commissioner
51 shall control, maintain and operate such institutions as are now or may
52 be put under his or her control.

53 § 21-202 Division for the aging. There shall be within the department
54 a division for the aging.

1 § 21-203 Power and duties. It shall be the power and duty of the divi-
2 sion for the aging:

3 1. to stimulate community interest in the problems of the aging;

4 2. to promote public awareness of resources available for the aging,
5 and to refer the public to appropriate departments and agencies of the
6 city, state and federal governments for advice, assistance and available
7 services in connection with particular problems;

8 3. to cooperate with and assist local neighborhoods in the develop-
9 ment of programs and the establishment of local offices;

10 4. to disburse available city, state and federal funds to programs
11 throughout the city and, when practical, coordinate such funds with
12 available funding from the private sector;

13 5. to promulgate rules and regulations for the operation of facili-
14 ties, services and programs under its jurisdiction; and

15 6. to maintain, operate and control such programs and facilities, as
16 may be necessary or required for the proper administration of the divi-
17 sion.

18 § 21-301. Division for youth services. 1. There shall be within the
19 department a division for youth services.

20 2. With respect to youth services the commissioner shall have all the
21 powers and duties of a youth bureau as such bureau is described in arti-
22 cle nineteen-A of the executive law and shall in addition have the
23 following powers and duties:

24 (a) to disburse available city, state and federal, and private-sector,
25 when applicable, funds to programs for youth throughout the city;

26 (b) to maintain, operate and control such youth programs and facili-
27 ties as necessary; and

28 (c) to promulgate rules and regulations for the operation of facili-
29 ties, services and programs within the department's jurisdiction.

30 § 21-402 Division of homeless services. There shall be within the
31 department a division of homeless services.

32 § 21-403 Powers and duties; director. 1. The head of the division of
33 homeless services shall be the director. The director shall have the
34 powers and perform the duties of a commissioner of human services under
35 the social services law for the purpose of fulfilling his or her respon-
36 sibilities.

37 2. The director, in the performance of his or her functions, shall:

38 (a) be responsible for transitional housing and services provided by
39 the city for eligible homeless families and individuals. The director
40 shall encourage the participation of and receive proposals from the
41 public and private sectors for the development of transitional housing
42 and services for homeless families and individuals. In performing such
43 duties, the director may develop and issue requests for such proposals
44 and evaluate responses thereto, negotiate, award, and administer
45 contracts, loans or other agreements, and obtain all necessary
46 approvals. For-profit and not-for-profit entities shall be eligible to
47 submit proposals, bid on contracts and other agreements, and apply for
48 grants and loans;

49 (b) plan and implement a redesign and restructuring of the system for
50 the provision of transitional housing and services for homeless families
51 and individuals;

52 (c) in consultation with other appropriate governmental agencies, plan
53 housing for homeless families and individuals;

54 (d) develop programs designed to improve access of homeless families
55 and individuals to existing housing;

1 (e) maintain, repair and rehabilitate transitional housing owned,
2 operated or managed by the division;

3 (f) establish performance criteria, goals and objectives with respect
4 to contract providers and monitor and evaluate such performance; and

5 (g) in consultation with other appropriate governmental agencies,
6 develop and operate outreach programs to identify and assist families
7 and individuals who are homeless and living in public spaces and partic-
8 ipate in the development of prevention programs to assist families and
9 individuals who are in imminent danger of becoming homeless.

10 3. In addition, the director is authorized, in consultation with
11 appropriate agencies, to provide any other services he or she deems
12 necessary to implement and effectuate the provisions of this title.

13 Title 22 - Economic Development

14 § 22-102 Commissioner. The head of the department shall be the commis-
15 sioner of economic development.

16 § 22-103 Powers and duties of the commissioner. The commissioner shall
17 have charge and control of and be responsible for all functions and
18 operations of the city relating to business and economic development,
19 the enhancement of economic development and financial opportunity for
20 minority and women owned business enterprises and ensuring equal employ-
21 ment opportunity by city contractors.

22 1. Such powers and functions shall include, without limitation, the
23 following:

24 (a) to establish business, industrial and commercial policies,
25 programs and projects which affect the business, industrial, commercial
26 or economic well-being, development, growth and expansion of the econom-
27 ic life of the city;

28 (b) to serve as liaison for the city with local development corpo-
29 rations, other not-for-profit corporations and all other entities
30 involved in economic development within the city;

31 (c) to study, organize, promote, coordinate and carry out within or
32 without the city, activities, projects and programs designed to encour-
33 age, stimulate and foster the well-being, development, growth and expan-
34 sion of business, industry and commerce in the city, and to enhance and
35 protect the economic life of the city;

36 (d) to assist, encourage and promote broadened employee ownership,
37 particularly through the use of employee stock ownership plans and
38 producer cooperatives, by conducting research, outreach and public
39 information programs regarding such ownership; by providing technical
40 assistance to employee groups exploring employee buyouts, and by ensur-
41 ing that firms applying for financial assistance from any entity
42 involved with economic development in the city shall be correctly
43 advised as to the potential advantages of forming an employee stock
44 ownership plan;

45 (e) to serve as a clearinghouse in connection with efforts to devise
46 solutions for problems affecting business, industry or commerce in the
47 city;

48 (f) to promote and encourage the location and development of markets
49 for city products;

50 (g) to promote and encourage the location and development of new busi-
51 ness and industry in the city, as well as the maintenance and expansion
52 of existing business and industry in the city;

53 (h) to promote, coordinate and implement activities, projects and
54 programs designed to attract foreign direct investment and promote over-

1 seas sales by firms in the city, and to otherwise encourage and stimu-
2 late the development of international business, commerce and trade in
3 the city;

4 (i) to administer and promote development of foreign trade zones with-
5 in the city;

6 (j) to study conditions affecting business, industry and commerce in
7 the city, and collect, disseminate and make studies with regard to the
8 information collected;

9 (k) to maintain a business information service in order to assist
10 business and industry in the city and to encourage businesses outside
11 the city to patronize the industrial establishments of the city;

12 (l) to make recommendations to the mayor concerning steps deemed
13 advisable for the promotion and advancement of business prosperity in
14 the city;

15 (m) to publicize the economic advantages and other factors which make
16 the city a desirable location for businesses;

17 (n) to collect, compile and distribute information dealing with the
18 facilities, advantages and attractions of the city and historic and
19 scenic points and places of interest therein;

20 (o) to plan and conduct informational programs and publicity designed
21 to attract tourists, vacationers, visitors and other interested persons
22 to the city and its attractions;

23 (p) to encourage and cooperate with public and private agencies,
24 organizations and groups to publicize the business and commercial advan-
25 tages of the city;

26 (q) to cooperate with and assist any corporation, organization or
27 agency, public or private, the objectives of which include the advance-
28 ment of business, industry prosperity, expansion of existing business,
29 the creation of new job opportunities and provide support for any such
30 efforts or purposes; and

31 (r) to issue permits for the taking of motion pictures, and for the
32 taking of photographs and for the use or operation of television cameras
33 or other transmitting television equipment in, on or about city proper-
34 ty, streets, parks, piers, wharves, docks, bridges or tunnels.

35 2. The commissioner shall have the power and duty to exercise the
36 functions of the city relating to the development, redevelopment,
37 construction, operation, maintenance, management and regulation of
38 public markets, wharf property, waterfront property and airports within
39 the city, including, without limitation, the following:

40 (a) to have charge and control of the public markets of the city, to
41 fix fees for services, licenses and privileges in connection therewith,
42 to rent space and enter into leases therefor, and to regulate all facil-
43 ities in use as public markets for the public health, safety and
44 welfare;

45 (b) to have charge and control of wharf property and waterfront prop-
46 erty owned by the city and of the building, repairing, altering, main-
47 taining, strengthening, protecting, cleaning, dredging and deepening of
48 such property; provided that the commissioner may designate parcels of
49 waterfront property to be managed pursuant to this paragraph and leased
50 pursuant to paragraph (g) of this subdivision, by the commissioner of
51 general services and contracting, provided, any such designation to be
52 made in writing and with approval of the mayor;

53 (c) to have power to enforce with respect to public markets, water-
54 front property and any structures thereon under its jurisdiction, the
55 labor law and other such laws, rules or regulations as may govern any
56 such activities undertaken, as described in paragraph (b) of this subdi-

1 vision, and to establish and amend fees to be charged for the issuance
2 of such permits or certificates of completion;

3 (d) to have power to regulate waterfront property and any structures
4 on any waterfront property used in conjunction with commerce or naviga-
5 tion;

6 (e) to have power to regulate the use of marginal streets so that they
7 may be used to best advantage in connection with waterfront property and
8 to regulate by license or otherwise the transfer of goods and merchan-
9 dise upon, over or under such streets;

10 (f) to lease, subject to council approval, any wharf property belong-
11 ing to the city for purposes of commerce or in furtherance of naviga-
12 tion;

13 (g) to grant temporary permits, terminable at will, for a period not
14 exceeding three years for purposes of commerce or navigation and not
15 exceeding one year for other purposes;

16 (h) to set aside by order any wharf property owned by the city, which
17 has not been leased, for general wharfage purposes or for a special kind
18 of commerce and to revoke or modify such order at any time;

19 (i) to regulate the charges for wharfage, crantage and dockage of all
20 vessels or floating structures using any wharf property, such rates to
21 be fixed by rules of the commissioner;

22 (j) to sell, subject to the approval of the council, buildings, struc-
23 tures and other improvements on market property to a person leasing such
24 property;

25 (k) to manage and promote the economic development of all airports,
26 airplane landing sites, seaplane bases and heliports owned by the city
27 and to lease such property, provided that no such lease may be author-
28 ized by the commissioner until a public hearing has been held and after
29 publication of notice in a newspaper of general circulation in the city
30 at least thirty days prior to such hearing;

31 (l) to have charge and control of the regulation for the health and
32 safety of the general public at all airports, airplane landing sites,
33 seaplane bases, heliports, marginal streets and parking facilities owned
34 by the city;

35 (m) to establish, amend and enforce rules for the proper care and use
36 of all public markets, wharf property, airports, heliports, airplane
37 landing sites or seaplane bases; the violation or failure to comply with
38 any such enforcement order shall be triable in criminal court and
39 punishable by not more than thirty days' imprisonment or a fine of not
40 less than one hundred dollars nor more than five thousand dollars, or
41 both;

42 (n) to have the exclusive power to regulate all privately owned
43 airports, airplane landing sites, seaplane bases and heliports, the
44 operations out of and into such bases, as well as the control of ground
45 effect craft;

46 (o) to promote and encourage the expansion and development of the city
47 as a center for intrastate, interstate and international freight trans-
48 portation; and

49 (p) to administer and enforce the provisions of the joining resolution
50 of the city in respect to any and all structures on waterfront property
51 used in connection with the furtherance of waterfront commerce on navi-
52 gation.

53 3. With respect to energy matters, the commissioner shall have the
54 power and duty:

55 (a) to plan, formulate, coordinate and advance energy policy for the
56 city;

1 (b) to analyze the energy and fuel needs of the city with respect to
2 all types of energy, to prepare intermediate and long-range plans, goals
3 and programs designed to meet such needs and to establish priorities
4 among them;

5 (c) to develop, implement and manage energy-related programs for
6 economic development and other purposes, including the administration of
7 the public utility service and to exercise all of the functions, powers
8 and duties of such public utility service; and

9 (d) to perform such other responsibilities with respect to energy
10 matters, including responsibilities delegated elsewhere by the city
11 charter, as the mayor shall direct.

12 § 22-104 Waterfront plans. 1. No marginal street bulkhead line, pier-
13 head line or other similar line demarcating the extent of waterfront
14 development may be delineated, established or changed by the commis-
15 sioner except in accordance with the provisions of the city charter. The
16 commissioner may apply to the department of city planning to incorporate
17 such existing plans for the waterfront into the city map pursuant to the
18 procedure for review and approval of a change to the city map.

19 2. The commissioner may widen, open, construct, abandon or close any
20 marginal street or avenue included in such waterfront plans and shall
21 maintain the widened portion of such street and the widened portion of
22 such street shall not be a public street. Before acting under this
23 subdivision, the commissioner shall make a report to the department of
24 city planning including a map showing the proposed changes, but if the
25 department or, upon appeal of the action of the department, the appeals
26 board does not approve such proposal then it must be approved by the
27 council or the commissioner shall not proceed.

28 § 22-201 Division of economic and financial opportunity. 1. There
29 shall be a division of economic and financial opportunity within the
30 department.

31 2. The purpose of the division shall be to enhance the ability of
32 minority and women owned business enterprises to compete for city
33 contracts, to enhance city agencies' awareness of such enterprises and
34 to ensure their participation in the city procurement process.

35 3. In addition to the other purposes of this section, the division of
36 economic and financial opportunity shall also administer any programs
37 for small or locally-owned business enterprise programs as may be estab-
38 lished by law.

39 § 22-301 Division of labor services. 1. There shall be a division of
40 labor services within the department and the commissioner shall adminis-
41 ter the provisions of this section and enforce a citywide program to
42 ensure that city contractors and subcontractors take appropriate action
43 to ensure that women and minority group members are afforded equal
44 employment opportunities, and that all persons are protected from
45 discrimination prohibited under the provisions of federal, state and
46 local laws regarding recruitment, employment, job assignment, promotion,
47 upgrading, transfer, layoff, termination or rates of compensation.

48 2. The commissioner shall also monitor compliance by contractors with
49 state and federal prevailing wage requirements.

50 § 22-401 The city of Staten Island public utility service. The commis-
51 sioner or his or her designee shall serve as the director of the public
52 utility service established by provisions of the code of the preceding
53 municipality.

54 § 22-402 Authorization for public utility service. Pursuant to article
55 fourteen-A of the general municipal law, the city hereby establishes a
56 public utility service, as such term is defined in section three hundred

1 sixty of such article, which is authorized to establish, construct,
2 lease, purchase, own, acquire, use or operate facilities within or with-
3 out the territorial limits of the city, for the purpose of furnishing to
4 itself or for compensation to its inhabitants any service similar to
5 that furnished by any public utility company specified in article four
6 of the public service law. For such purpose the city may purchase elec-
7 trical and other forms of energy from the state, or from any state agen-
8 cy, or other municipal corporation, or from any private or public corpo-
9 ration, and may sell or distribute such power to itself and to
10 residential, commercial, industrial and other customers. The city shall
11 possess any and all powers granted to a public utility service pursuant
12 to article fourteen-A of the general municipal law and any other appli-
13 cable provision of law.

14 § 22-403 Acquisition of energy and facilities. The city shall
15 contract for or otherwise purchase or acquire hydroelectric or other
16 forms of energy as shall be available from the power authority of the
17 state of New York, the state, any state agency, any other municipal
18 corporation, or any private or public corporation, and shall arrange to
19 use, lease or acquire the transmission, substation and distribution
20 facilities necessary to furnish such power to the city and, for compen-
21 sation, to residential, commercial, industrial and other customers;
22 provided, however, that the city will not acquire or build any electric
23 or gas transmission or distribution facilities which are parallel to, or
24 duplicative of electric or gas transmission or distribution facilities
25 of any utility companies within the city, nor take any action to impair
26 any agreements, franchises, rights or obligations of any utility company
27 within the city including, to provide safe, adequate and efficient
28 service to conduct its business in the city and to protect its assets
29 unless so authorized by further local law and public referendum.

30 § 22-404 Distribution and sale of energy. The city shall arrange with
31 any utility companies for the distribution of energy through the use,
32 lease, or acquisition of transmission, substation and distribution
33 facilities within the service areas of such companies and for such
34 companies to act on behalf of the city for collection of charges for
35 such energy within such service areas, or for the sale of energy to such
36 companies for resale to customers within the service areas of such
37 companies.

38 § 22-405 Rates. The fixing of rates for furnishing hydroelectric and
39 other forms of energy to residential, commercial, industrial and other
40 customers shall include consideration of (1) the actual cost to the city
41 for the purchase, distribution and delivery of such energy to such
42 customers, (2) the actual expenses necessary for administration of the
43 public utility service, including expenses for research and development,
44 and (3) any other costs or charges allowed under law, including but not
45 limited to, losses of tax revenues resulting from the operation of the
46 public utility service. Such rates shall be computed to provide revenue
47 in an amount not less than that necessary to recover fully such costs
48 and expenses. Such rates shall be subject to approval of the city coun-
49 cil.

50 § 22-406 Municipal energy fund. Revenues received from the operation
51 of the public utility service shall be paid into a fund to be known as
52 the municipal energy fund. The revenues paid into such fund shall not
53 be revenues of the city, and payments from such fund shall be made with-
54 out appropriation and shall not be included in the expense budget of the
55 city. Nothing in this section shall prohibit the city from appropriating
56 expense or capital funds in connection with the public utility service,

1 nor shall payments from the municipal energy fund to the general fund be
2 prohibited.

3 § 22-501 Bureau of ports and trade. There shall be a bureau of ports
4 and trade within the department of economic development.

5 § 22-502 Definitions. As used in this title:

6 1. "Director" shall mean the director of the bureau of ports and
7 trade.

8 2. "Bureau" shall mean the bureau of ports and trade.

9 § 22-503 Director. The head of the bureau shall be the director of
10 ports and trade.

11 § 22-504 Powers and duties of the director. The director shall have
12 the power and duty to:

13 1. exercise the powers of a commissioner of public markets and a city
14 department of public markets under the agriculture and markets law;

15 2. have charge and control of the wharf property and waterfront prop-
16 erty owned by the city to the extent permitted by state law;

17 3. have power to regulate waterfront property and the structures on
18 the property such as wharves, piers, docks and bulkheads;

19 4. (a) have power to enforce, on waterfront property, the labor law
20 and other such laws, rules and regulations as may govern dredging, fill-
21 ing, removal, safety, maintenance, sanitary conditions, use and occupan-
22 cy of such structures on waterfront property; (b) issue permits or
23 certificates of completion in reference thereto; and (c) establish or
24 amend fees to be charged for the issuance of such permits with such fees
25 to be established by rules of the director;

26 5. have power to regulate the use of marginal streets in connection
27 with wharf property and to regulate by license any transfer of goods or
28 merchandise on, over or under such marginal streets;

29 6. enforce provisions of the zoning resolutions of the city in respect
30 to structures used in conjunction with waterfront commerce or naviga-
31 tion;

32 7. lease, subject to approval of or authorization by the city council,
33 any wharf property belonging to the city for purposes of waterfront
34 commerce or in furtherance of navigation; leases shall be for such terms
35 and contain such conditions as provided by law and leases may be sold at
36 public auction;

37 8. grant temporary permits to use and occupy any wharf property
38 belonging to the city, such permits not to exceed one year and to termi-
39 nate at will;

40 9. set aside by order any wharf property belonging to the city, which
41 has not yet been leased, for any special kind of commerce, any class of
42 vessel or for general wharfage purposes;

43 10. regulate charges for wharfage, crantage and dockage of all vessels
44 or floating structures using any wharf property;

45 11. establish, amend and enforce all necessary rules for proper care
46 of all public markets, wharf property, waterfront property, airports,
47 airplane landing sites, seaplane bases and heliports owned by the city;

48 12. sell, subject to approval of or authorization by the city council,
49 buildings, structures and other improvements on market property or wharf
50 property;

51 13. manage and promote the economic development of all airports,
52 airplane landing sites, seaplane bases and heliports owned by the city;

53 14. have charge and control of the regulation for the health and safe-
54 ty of the general public at all airports, airplane landing sites, seap-
55 lane bases, heliports, marginal streets and parking facilities appurten-
56 ant thereto owned by city;

1 15. have power to regulate all privately owned airports, airplane
2 landing sites and seaplane bases;

3 16. promote, coordinate and implement projects, activities and
4 programs designed to attract foreign investment and overseas sales and
5 to otherwise encourage the development, growth and expansion of interna-
6 tional business, commerce and trade in the city; and

7 17. administer and promote development of foreign trade zones in the
8 city.

9 § 22-505 Waterfront plans. All plans for the waterfront of the city
10 are continued in effect and may be changed by the director pursuant to
11 the procedure provided in this section.

12 The procedure for review and approval of any change to the plans for
13 the water front shall be the same as in the case of a change to the city
14 map and the director may apply to the department of city planning to
15 incorporate plans for the waterfront pursuant to the procedure for
16 review and approval of a change to the city map.

17 The director may widen, open, construct, abandon or close any marginal
18 street or avenue included in any plans for changes and the director
19 shall also maintain such widened portion of such streets. The director
20 may proceed with any proposed changes only if the department of city
21 planning approves the change; however, if the department of city plan-
22 ning does not approve, the director may not proceed unless the city
23 council authorizes, by a two-thirds vote, the director to proceed.

24 The department of city planning shall act on such proposed changes
25 within six weeks from the time of filing with the department of city
26 planning and if it does not act within the six weeks, the director may
27 proceed with the changes.

28 Title 23 - Reserved

29 Title 24 - Environmental Protection

30 § 24-101 Definitions. As used in this title:

31 1. "Commissioner" shall mean the commissioner of the department of
32 environmental protection.

33 2. "Department" shall mean the department of environmental protection.

34 § 24-102 Commissioner. 1. The head of the department of environmental
35 protection shall be the commissioner of environmental protection.

36 2. The commissioner shall have the control of and be responsible for
37 all those functions and operations of the city relating to (a) provision
38 of adequate water supply; (b) disposal of sewage; (c) prevention of air,
39 water and noise pollution; (d) response to emergencies caused by
40 releases or threatened releases of hazardous substances; and (e)
41 collection and management of information concerning the amount, location
42 and nature of hazardous substances.

43 § 24-103 Powers and duties of commissioner. The powers and duties of
44 the commissioner shall include, without limitation, the following:

45 1. Water resources control. (a) The commissioner shall have charge and
46 control, including the power to examine, of (i) all structures and prop-
47 erty connected with the supply and distribution of water for public use,
48 including all fire hydrants and water meters; (ii) furnishing the water
49 supply and maintaining its quality, including ample reserve contingen-
50 cies for future demand; and (iii) making and enforcing rules and regu-
51 lations governing and restricting use of water supply.

52 (b) The commissioner may examine any sources of water supply of
53 private companies supplying any portion of the city and may exercise
54 superintendence, regulation and control in respect thereof.

1 (c) The commissioner shall regulate and control emissions into water
2 of harmful or objectionable substances, contaminants or pollutants and
3 shall enforce all laws and regulations with respect to such emissions.

4 (d) The commissioner may make investigations and studies as necessary
5 for purpose of enforcement, control or elimination of pollution of the
6 waters and, for such purpose, may compel witnesses and take their testi-
7 mony under oath.

8 2. Sewage control. The commissioner shall have charge and control over
9 location, construction, alteration, repair, maintenance and operation of
10 all public and private sewers, intercepting sewers, disposal plants and
11 drainage systems.

12 The commissioner may adopt regulations with regard to the discharge
13 of sewage, refuse, factory waste and trade waste into the public sewers
14 for such discharge. The commissioner may also restrict, regulate or
15 prohibit the use of public sewers for such discharge and may prescribe
16 civil penalties for the violation thereof.

17 3. Air resources control. The commissioner shall regulate and control
18 the emission into the open air of harmful or objectionable substances,
19 including but not limited to, smoke, soot, dust, fumes, ash, gas vapors
20 and any products of combustion resulting from any fuel burning equip-
21 ment.

22 The commissioner shall enforce all laws, rules and regulations with
23 respect to such emissions. The commissioner shall make investigations
24 and studies as necessary for controlling and eliminating air pollution
25 and may compel witnesses and take their testimony under oath.

26 4. Noise pollution control. The commissioner shall enforce all laws,
27 rules and regulations to eliminate noise pollution. The commissioner
28 shall make investigations, compel witnesses and take their testimony
29 under oath for such purposes.

30 The commissioner shall also undertake studies to determine permissible
31 sound levels and shall correct problems related to noise control.

32 5. Environmental consequences. The commissioner may review and comment
33 upon the environmental consequences of any activity that may have an
34 impact on the physical aspects of the environment and may be responsible
35 for investigating, evaluating and reporting such activities related to
36 fuel supply and demand, alternative sources of energy and resource
37 recovery.

38 6. Energy. The commissioner shall have the power and duty of formulat-
39 ing an energy policy for the city.

40 The commissioner shall analyze the needs of the city with regard to
41 all kinds of energy and fuel needs. The commissioner shall prepare
42 intermediate and long range plans, goals and programs to meet such
43 needs. The commissioner shall also study, organize, promote and carry
44 out activities and programs designed to encourage fuel and energy
45 conservation.

46 7. Emergency response. The commissioner shall (a) respond to emergen-
47 cies caused by releases of hazardous substances into the environment;
48 (b) take measures to protect the public health or welfare; and (c)
49 recover costs of such response measures from the responsible persons.

50 8. Community right-to-know. The commissioner shall (a) have the power
51 to collect, compile and manage information concerning the nature of
52 hazardous substances present in the city, and (b) make such information
53 available to the public and to city personnel responsible for responding
54 to hazardous substance emergencies.

55 § 24-104 Environmental control board. 1. There shall be within the
56 department an environmental control board, the chairperson of which

1 shall be the commissioner, consisting of the commissioners of such
2 departments as the mayor and council shall determine.

3 2. The environmental control board may adopt and amend regulations not
4 inconsistent with any provision of law with regard to (a) regulating
5 emissions or pollutants into the air or waters from any land or water
6 sources, and (b) regulating or prohibiting the installation or
7 construction of any equipment giving forth such emissions or pollutants.

8 3. The board, concurrent with the jurisdiction of the criminal courts
9 of the city, shall enforce the provisions of the city charter, this code
10 and the code of the preceding municipality which relate to (a) cleanli-
11 ness of the streets; (b) disposal of wastes; (c) provision of adequate,
12 pure supply of water; (d) prevention of air, water and noise pollution;
13 (e) regulation of street peddling; (f) prevention of fire and danger to
14 life as designated by the fire commissioner; (g) construction and
15 inspection of structures of the city for sanitary conditions, safety,
16 occupancy and as designated by the buildings and real property commis-
17 sioner; (h) response to emergencies caused by release of hazardous
18 substances; and (i) reporting of all information with regard to amount,
19 labeling and location of all hazardous substances.

20 4. The board shall have concurrent jurisdiction with the board of
21 health to enforce provisions of the health code which the board of
22 health shall designate.

23 § 24-105 Proceedings for violations. The environmental control board
24 shall conduct proceedings for the adjudication of violations of the
25 laws, rules and regulations enforced by the board.

26 The form and wording of notices of violation shall be prescribed by
27 the board. Notices shall contain information advising the persons
28 charged with the manner and the time in which such person has to admit
29 or deny the charges. The notice shall also contain a warning that fail-
30 ure to plead in the time stated may result in a default decision entered
31 against such person, or failure to plead may be deemed an admission of
32 liability and shall be grounds for imposing a maximum penalty.

33 A judgment entered by the board pursuant to this section shall remain
34 in full force and effect for eight years.

35 The board may not enter any final decision or order pursuant to this
36 section unless the notice of violation shall have been served in the
37 manner as is prescribed for service of process by the civil practice law
38 and rules, with certain exceptions.

39 Title 25 - Reserved

40 Title 26 - Housing, Buildings, Construction and Maintenance

41 § 26-101 Definitions. As used in this title:

42 1. "Commissioner" shall mean the commissioner of the department of
43 buildings and real property.

44 2. "Department" shall mean the department of buildings and real prop-
45 erty.

46 3. "Class" refers to the classification of buildings in the building
47 code or other applicable laws and shall also refer to the terms "class"
48 or "kinds" as used in the multiple dwelling law.

49 4. "Division" shall mean the division of housing preservation and
50 development.

51 § 26-102 Commissioner. The head of the department shall be the commis-
52 sioner of buildings and real property.

53 § 26-103 Department functions. The department shall enforce, with
54 respect to buildings and structures, the building code, zoning resol-

1 utions, multiple dwelling law, labor law and other regulations that may
2 govern the construction, alteration, maintenance, use, occupancy, safe-
3 ty, sanitary conditions or inspection of buildings or structures in the
4 city.

5 The department shall perform the functions of the city of Staten
6 Island relating to:

7 1. necessary legal action regarding designation of unsafe buildings or
8 structures and the removal or remedy thereof by demolition or sealing;

9 2. the shoring of unsafe buildings or structures;

10 3. testing and approval of all power-operated cranes, derricks or
11 other hoisting equipment used to raise and lower articles on the outside
12 of buildings, not to include cranes and derricks used in industrial
13 plants or yards;

14 4. location, construction, alteration and removal of signs, either
15 illuminated or non-illuminated, attached to the exterior of any build-
16 ings;

17 5. all surface and sub-surface construction within the curblin,
18 driveways and entrances thereto and the issuance of permits in reference
19 thereto;

20 6. regulation, testing and inspection of gas and electricity used for
21 light, heat or power purposes and all electric, gas and steam meters,
22 electric wires and lights furnished for the city; and

23 7. regulation, inspection and testing of wiring and appliances for
24 light, heat and power in or on any building or structure in the city,
25 except that the jurisdiction of the department shall not extend to
26 waterfront property; which property and structures shall be under the
27 jurisdiction of the department of ports and trade.

28 § 26-104 Powers and duties. 1. There shall be a main office of the
29 department.

30 2. Persons appointed as inspectors to perform functions of the depart-
31 ment shall have such qualifications as prescribed by the commissioner;
32 however, such qualifications shall include:

33 (a) a minimum of five years experience working at a construction
34 trade;

35 (b) a license as a professional engineer or architect issued pursuant
36 to the education law;

37 (c) a minimum of three years experience working at a construction
38 trade and a minimum of two years formal training in a construction
39 program in a college, technical college or trade school; or

40 (d) a minimum of two years experience working at a construction trade
41 or a minimum two years formal education in a construction program in a
42 college, trade or technical school and a minimum of three years partic-
43 ipation in an apprentice inspection program approved by the commissioner
44 and personnel director.

45 3. The commissioner shall have the following powers and duties, with
46 respect to buildings and structures:

47 (a) to examine, approve or disapprove construction or alteration plans
48 for any building or structure and to direct the inspection of such
49 building or structure;

50 (b) to require that the construction or alteration of any building,
51 including the installation or alteration of any service equipment there-
52 in, shall be in accordance with the provisions of laws and regulations
53 applicable thereto; and

54 (c) to issue certificates of occupancy for any building or structure
55 in the city, provided that:

1 (i) no building or structure may be occupied or used until a certifi-
2 cate of occupancy has been issued;

3 (ii) if a building or structure for which a certificate of occupancy
4 has not previously been required or issued shall be altered in such a
5 way as to now require a certificate, the building may not be used for
6 any purpose until such certificate is issued;

7 (iii) no buildings altered or converted from one class to another
8 shall be occupied until a certificate has been issued; and, in cases
9 where the alteration did not necessitate the total vacating of the
10 building, the certificate must be issued within thirty days of the
11 completion of such work or the occupancy of the building may not contin-
12 ue;

13 (iv) the certificate of occupancy of a building or structure shall
14 certify that such structure conforms to requirements of all laws, rules
15 and regulations applicable thereto. Every certificate of occupancy
16 shall be binding and remain binding and conclusive upon all agencies and
17 officers of the city, unless vacated or modified by a court of competent
18 jurisdiction or a board of appeals, and upon the department of labor of
19 the state of New York;

20 (v) the commissioner may issue a temporary certificate of occupancy
21 for any part of a building, provided that such temporary use or occupan-
22 cy does not jeopardize life or property;

23 (vi) the commissioner may, in specific cases, permit experimental or
24 demonstration construction to obtain knowledge and information; the
25 commissioner may also submit reports on results thereof to the depart-
26 ment of buildings and real property; and

27 (vii) the commissioner shall have the power and duty to conduct
28 inquiries to assist him or her in his or her department duties where
29 public safety is involved and he or she shall have subpoena power to
30 compel witnesses, administer oaths, and compel production of books,
31 papers and documents.

32 All certificates of occupancy in effect on the date of establishment
33 are continued.

34 § 26-105 Appeals. Appeals may be taken from the decisions of the
35 commissioner to a three person board of appeals to be appointed by the
36 mayor; one of whom shall be an architect and one of whom shall be a
37 professional engineer.

38 § 26-106 Inspection. The commissioner, or any officer of the depart-
39 ment authorized in writing by the commissioner, may enter and inspect
40 any building, structure, enclosure, premises or any part thereof or
41 anything attached thereto.

42 Any refusal to permit such entry or inspection shall be a misdemeanor
43 triable in criminal court and punishable, upon conviction, of not more
44 than thirty days imprisonment, a fine of not more than one hundred
45 dollars, or both.

46 § 26-107 Public buildings and facilities. The department shall:

47 1. have charge and control over the plans and specifications for and
48 the construction of all buildings and facilities paid for in whole or in
49 part from the city treasury;

50 2. manage, alter, rejoin, operate, maintain and clean buildings,
51 facilities and offices leased or occupied for public use by more than
52 one city agency whose management, alteration, repair, operation, mainte-
53 nance or cleaning is paid for in whole or in part from the city treas-
54 ury, and as directed by the mayor, to perform services in space occupied
55 for public use by a single city agency;

1 3. except for the provisions of title five of the code of the preced-
2 ing municipality, employ, when in the commissioner's opinion such
3 services are necessary or desirable, qualified consultants in private
4 practice to aid the commissioner in carrying out his or her duties and
5 responsibilities with respect to public buildings or facilities; such
6 consulting or advisory services shall be performed under the supervision
7 of the commissioner;

8 4. consult with the agencies for whose use the buildings or structures
9 are intended in preparing and considering plans and specifications and
10 in carrying out such plans and specifications, and to consider any
11 recommendations made by such agency.

12 Notwithstanding the provisions of this section, the exercise of the
13 powers and duties set forth herein shall be subject to the jurisdiction
14 of any city agency performing urban renewal and public and publicly-aid-
15 ed housing functions to the extent, and in such areas, as directed by
16 the mayor;

17 5. exercise and perform such other powers and duties as may be
18 prescribed by law or delegated to him or her in relation to laboratory
19 testing of commodities and construction materials.

20 § 26-108 Real property. The department, with respect to real property,
21 shall have power to:

22 1. purchase, lease, condemn or otherwise acquire real property for the
23 city, subject to the joint approval or authorization of the mayor and
24 the council, and to sell, lease, exchange or otherwise dispose of real
25 property of the city, subject to the joint approval or authorization of
26 the mayor and the council;

27 2. assign and reallocate to city agencies space and real property
28 owned or leased by the city, to establish comprehensive and continuing
29 programs and standards for utilization of space owned or leased by the
30 city and to conduct surveys of space utilization;

31 3. manage all real property of the city not used for public purposes,
32 including real property required for a public purpose and not being
33 currently utilized for such purpose, except wharf property; provided,
34 that the commissioner shall be responsible for the management, leasing
35 or permitting of any parcels of wharf property and water front property
36 as provided in any designation made by the commissioner of economic
37 development;

38 4. exercise and perform such other powers and duties as may be
39 prescribed by law or delegated to the commissioner in relation to the
40 acquisition, disposition, management, site selection, assignment, demo-
41 lition or other treatment of real property of the city;

42 5. employ, where desirable, managing agents to manage city properties
43 and collect rents and pay bills; and

44 6. keep, maintain and annually update a master list of leases wherein
45 the city or its agencies is a tenant.

46 § 26-109 Building code. The building code which is in force in the
47 preceding municipality on the date and time when this title takes effect
48 and all existing provisions of the building code, including penalties
49 affixed for violations, shall continue to be binding and in full force,
50 except as amended from time to time by the city of Staten Island.

51 A copy of such code shall be on file in the office of the city clerk.

52 § 26-201 Division of housing preservation and development. There shall
53 be a division of housing preservation and development within the depart-
54 ment.

55 § 26-202 Powers and duties of the division. The division is vested
56 with:

1 1. all functions of the city relating to the rehabilitation, mainte-
2 nance, alteration and improvement of residential buildings and privately
3 owned housing, pursuant to various articles of the private housing
4 finance law; acting as liaison with the New York city rehabilitation
5 mortgage insurance corporation; the execution of emergency repairs to
6 and the sealing, removal and demolition of buildings, structures and
7 private housing and the enforcement of the applicable provisions of the
8 multiple dwelling law or others laws relating to the maintenance, use,
9 occupancy, safety or sanitary condition of any building which is occu-
10 pied, or intended to be occupied, as a home, residence or dwelling
11 place;

12 2. functions and duties with respect to the relocation of tenants of
13 real property and the selection of tenants for publicly owned or public-
14 ly aided housing;

15 3. all functions and duties of the city as related to slum clearance,
16 slum prevention and urban renewal, neighborhood conservation, rehabili-
17 tation and prevention of blighted, deteriorated or unsanitary areas, and
18 public housing, including regulation of rents in housing built with
19 state or local financing; and

20 4. functions, rights and powers granted to or delegated to the housing
21 and redevelopment board, the housing and development administration and
22 the New York city housing authority.

23 § 26-203 Housing preservation and development; commissioner. With
24 respect to matters of housing preservation and development. The commis-
25 sioner shall:

26 1. have the power to establish and administer programs designed to
27 encourage the rehabilitation and preservation of existing housing;

28 2. administer laws authorizing tax exemption or tax abatement and
29 process applications for such abatements and exemptions pursuant to
30 provisions of this code;

31 3. manage and superintend all real property acquired by the city for
32 housing and urban renewal purposes;

33 4. represent the city in carrying out the provisions of the private
34 housing finance law and act as the "supervising agency" pursuant to the
35 private housing finance law;

36 5. represent the city in carrying out the provisions of the general
37 municipal law, including acquiring, leasing or disposing of real proper-
38 ty;

39 6. undertake projects and exercise rights, powers, and privileges of
40 the applicable public housing law;

41 7. impose and collect charges and fees for financing, regulation,
42 supervision and audit of municipality-aided projects and loan programs
43 administered by the commissioner, with such moneys to be set aside in an
44 account for administrative expenses for the department;

45 8. acquire real property on behalf of other city agencies;

46 9. sell, lease, exchange or dispose of residential real property of
47 the city, provided that no such sale shall be authorized without the
48 mayor's and council's approval and until a public hearing has been held
49 and public notice given;

50 10. manage and superintend all residential real property of the city
51 not used for public purposes. The provisions of this subdivision are not
52 applicable to wharf property, real property under jurisdiction of the
53 Metropolitan Transportation Authority or the jurisdiction of the New
54 York city housing authority or the jurisdiction of the Triborough Bridge
55 and Tunnel Authority;

1 11. manage, demolish, seal or otherwise treat residential real proper-
2 ty as necessary; and
3 12. employ professional community and other personnel to manage resi-
4 dential real property.
5 § 26-204 Inspection. 1. Inspections. A housing maintenance inspector
6 shall have such qualifications as prescribed by the department of
7 personnel after consultation with the commissioner.
8 2. Entry. The commissioner or any inspector may enter and inspect any
9 building, structure, enclosure, premises, or any part thereof and
10 refusal to permit such inspection shall be a misdemeanor triable in
11 criminal court, punishable by not more than thirty days imprisonment or
12 a fine of not more than one hundred dollars or both.
13 § 26-205 Acquisitions of real property. No purchase, lease, condemna-
14 tion or acquisition of real property shall be authorized until (i) a
15 public hearing has been held, and (ii) the department shall have
16 received the joint approval or authorization of the mayor and the coun-
17 cil.
18 In the case of acquisition by purchase or condemnation, a hearing as
19 described above shall not be required if a public hearing is already
20 being held with respect to such purchase pursuant to any other require-
21 ment of law.

22 Title 27 - Health and Mental Hygiene

23 § 27-101 Definitions. As used in this title:
24 1. "Commissioner" shall mean the commissioner of the department of
25 health and mental hygiene.
26 2. "Department" shall mean the department of health and mental
27 hygiene.
28 § 27-102 Powers and duties of commissioner. The commissioner shall
29 have the powers and duties of the department which shall include but
30 shall not be limited to:
31 1. Determining the needs of the mentally disabled in the city, which
32 determination shall include the review and evaluation of all mental
33 hygiene services and facilities within the commissioner's jurisdiction;
34 2. Engaging in short-range, intermediate-range and long-range mental
35 hygiene planning;
36 3. Developing and submitting to the mayor and council a program for
37 the delivery of services for the developmentally disabled, including
38 construction and operation of facilities;
39 4. Arranging with the approval of the mayor, for the rendition of
40 services and operation of facilities by other agencies of the city;
41 5. Within the amounts appropriated therefor, entering into contracts
42 for the rendition or operation of services and facilities on a per capi-
43 ta basis or otherwise;
44 6. Within the amounts appropriated therefor, executing such programs
45 and maintaining such facilities as may be authorized under such appro-
46 priations;
47 7. Using the services and facilities of public or private voluntary
48 institutions whenever practical, and encouraging all providers of
49 services to cooperate with or participate in the program, whether by
50 contract or otherwise;
51 8. Implementing and administering an inclusive citywide planning proc-
52 ess for the delivery of services for the developmentally disabled;
53 consistent with applicable law, standards and procedures for community
54 participation at the local community level;

1 9. Encouraging the development and expansion of programs for the
2 prevention, diagnosis, care, treatment, social and vocational rehabili-
3 tation, special education and training of the developmentally disabled
4 and for public education or developmental disability;

5 10. Establishing coordination and cooperation among all providers of
6 services, coordinating the department's program with the program of the
7 state department of mental hygiene so that there is a continuity of care
8 among all providers of services; and seeking to cooperate by mutual
9 agreement with the state department of mental hygiene and their repre-
10 sentatives in preadmission screening and in post-hospital care of
11 persons suffering from developmental disability;

12 11. Making policy and planning for, monitoring, evaluating and exer-
13 cising general supervision over all services and facilities for the
14 developmentally disabled within the commissioner's jurisdiction; and
15 exercising general supervisory authority through the promulgation of
16 appropriate standards consistent with accepted professional practices
17 for care and treatment of patients;

18 12. To the extent necessary, when not inconsistent with any other law,
19 arranging for the visitation, inspection and investigation of all
20 providers of services, by the department or otherwise;

21 13. Conducting such inquiries as may be useful, including investi-
22 gations into individual patient care, in performing the functions of the
23 department and for such purpose the commissioner shall have subpoena
24 power to compel the attendance of witnesses, to administer oaths and to
25 compel the production of books, papers and documents and consistent with
26 the provisions of the mental hygiene law, having access to otherwise
27 confidential patient records, provided such information is requested
28 pursuant to the functions, powers and duties conferred upon the commis-
29 sioner by law;

30 14. Submitting all materials required by the mental hygiene law for
31 purposes of state reimbursement;

32 15. Serving as a member of such state or federally authorized commit-
33 tees as may be appropriate to the discharge of the commissioner's func-
34 tions;

35 16. Performing such other acts as may be necessary and proper to carry
36 out the provisions of this title and the purposes of the mental hygiene
37 law;

38 17. Develop, promote, provide, coordinate and evaluate addiction
39 programs for the prevention of addiction, treatment and rehabilitation
40 for persons addicted to narcotics and other dangerous drugs, including,
41 but not limited to, the following functions:

42 (a) participate in cooperative efforts of federal, state, regional and
43 city agencies and programs dealing with the problems of addiction to
44 narcotics and other dangerous drugs;

45 (b) evaluate present and proposed research designs, demonstration
46 projects, treatment and service programs and other requests related to
47 such prevention and care, before public funds are made available there-
48 for;

49 (c) promote or provide research and demonstration projects designed to
50 obtain information relating to the prevention of addiction and the
51 related treatment provided to drug addicts by public or voluntary
52 private agencies supported by city funds;

53 (d) promote or provide an educational and prevention program to
54 acquaint the public with the problems of addiction;

1 (e) promote or provide treatment agents for persons addicted to
2 narcotics, including, but not limited to, drug free programs, chemother-
3 apeutic programs and a school based drug prevention program;

4 (f) annually report to the city council, by March first as of the
5 preceding December thirty-first, on all treatment agents promoted or
6 provided during the year and proposed to be provided or promoted during
7 the current year, with particular attention given to the balance between
8 the treatment agents and their relative effectiveness; and

9 (g) promote or provide training programs for persons in public or
10 voluntary private agencies and institutions engaged in the prevention,
11 treatment and rehabilitation of persons addicted to narcotics.

12 § 27-103 Functions of the department. Except as otherwise provided by
13 this title and law, the department shall perform all those functions and
14 operations that relate to health and mental hygiene related needs of the
15 people of the city.

16 § 27-104 Construction clause. The provisions of this title shall be
17 carried out subject to and in conjunction with the provisions of the
18 mental hygiene law.

19 § 15-001. The sum of six million dollars (\$6,000,000), or so much
20 thereof as may be necessary, is hereby appropriated as an advance out of
21 any moneys in the general fund to the credit of the local assistance
22 account not otherwise appropriated and shall be made immediately avail-
23 able, for the expenses of the city of Staten Island, in carrying out the
24 provisions of this act relating to the transition government and estab-
25 lishment of such city. Notwithstanding any provision of law such moneys
26 shall be payable on the audit and warrant of the comptroller on vouchers
27 certified or approved in the manner prescribed by law. Such advance
28 shall be repaid from funds which shall be withheld by the state comp-
29 troller in equal payments over a period of five years out of the first
30 moneys available for the next succeeding payments of state aid appor-
31 tioned to the city of Staten Island as per capita aid for the support of
32 local government pursuant to section 54 of the state finance law.

33 § 15-002. The sum of one million dollars (\$1,000,000), or so much
34 thereof as may be necessary, is hereby appropriated as an advance out of
35 any moneys in the general fund to the credit of the local assistance
36 account not otherwise appropriated and shall be made immediately avail-
37 able, for the expenses of the city school district of the city of Staten
38 Island, in carrying out the provisions of this act relating to the
39 establishment of the city school district of such city. Notwithstanding
40 any provision of law such moneys shall be payable on the audit and
41 warrant of the comptroller on vouchers certified or approved in the
42 manner prescribed by law. Such advance shall be repaid from funds which
43 shall be withheld by the state comptroller in equal payments over a
44 period of five years out of the first moneys available for the next
45 succeeding payments of education aid apportioned to the city of Staten
46 Island as aid for the support of education.

47 § 16-001. Severability. The provisions of this act shall be severable,
48 and if the application of any clause, sentence, paragraph, subdivision,
49 section or part of this act to any person or circumstance shall be
50 adjudged by any court of competent jurisdiction to be invalid, such
51 judgment shall not necessarily affect, impair or invalidate the applica-
52 tion of any such clause, sentence, paragraph, subdivision, section, part
53 of this act or remainder thereof, as the case may be, to any other
54 person or circumstance, but shall be confined in its operation to the
55 clause, sentence, paragraph, subdivision, section or part thereof

1 directly involved in the controversy in which such judgment shall have
2 been rendered.

3 § 17-001. This act shall take effect immediately; provided, however,
4 that:

5 (a) the provisions of sections 7-009, 7-010 and 13-001 of this act
6 shall take effect on the first of January next succeeding the date on
7 which it shall have become a law;

8 (b) the provisions of sections 7-001 through 7-008, 8-001 through
9 8-023, 9-001 through 9-012, 10-001 through 10-008, 11-001 and 12-001
10 through 12-020 of this act shall take effect on the first of July in the
11 second year next succeeding the date on which it shall have become a
12 law;

13 (b-1) the amendments made to subdivisions 8 and 14 of section 2554 of
14 the education law by sections 4-007 and 4-008 of this act, respectively,
15 shall take effect upon the revival of such subdivisions as provided in
16 section 34 of chapter 91 of the laws of 2002, as amended;

17 (c) provided that the amendments to paragraphs (a), (b), (c), (d),
18 (e), and (f) of subdivision 2 of section 209 of the social services law
19 made by section 8-021 of this act shall take effect on the same date and
20 same manner as section 2 of part R of chapter 56 of the laws of 2025,
21 takes effect;

22 (d) the amendments to the second undesignated paragraph of subdivision
23 4 of section 246 of the executive law made by section 8-004 of this act
24 shall be subject to the expiration and reversion of such paragraph
25 pursuant to subdivision (aa) of section 427 of chapter 55 of the laws of
26 1992, as amended, when upon such date the provisions of section 8-004-a
27 of this act shall take effect; and

28 (e) provided that the amendments made to sections 257-c, 262, 266 and
29 267 of the executive law made by sections 8-007, 8-008, 8-009 and 8-010
30 of this act shall not affect the expiration or repeal of such sections
31 and shall be deemed expired and repealed therewith.