

Section 1. Notwithstanding any other provision of law to the contrary, any city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing for any such city taxes on general corporations, financial corporations and transportation corporations at the rates provided herein, or if alternative rates are provided, then, in such event, at either of such rates. The terms of such local law or local laws shall be, substantially, as follows except that any such local law may be amended for the purpose of conforming it with similar provisions of articles 9-A, 27 and 32 (except section 1456 thereof) of the tax law and section 8 of chapter 167 of the laws of 1972 as presently in effect or as they may be amended provided, however, that the definition set forth in subsection (c) of section 1450 of the tax law and the deduction set forth in subsection (f) of section 1453 of the tax law shall be incorporated in any local law imposing a tax such as is imposed by article 32 of the tax law and provided further, that credits analogous to the credits provided in paragraphs (b) and (c) of subdivision 1 of section 4-h of part 2 of this section and subject to the limitations contained in such part, may be incorporated in any local law imposing a tax such as is imposed under article 32 of the tax law, and provided further, that a provision analogous to paragraph 1 of subsection (b) of section 1455 of the tax law, as such paragraph 1 existed immediately prior to its repeal by section 24 of chapter 298 of the laws of 1985 (but subject to the amendments contained in paragraph 2 of subdivision (b) of section 11-643.5 of the administrative code of the city of New York), shall continue to apply to banking corporations organized under the laws of any country other than the United States and provided further, however, that in the event that any local law is adopted imposing a tax such as is imposed by such article 32 of the tax law, then no tax imposed by such city for any periods for which a tax such as is imposed by such article 32 is imposed and the rates of tax under any such local law imposing a tax such as is imposed by such article 32 shall be, for the basic tax analogous to that fixed by subsection (a) of section 1455 of the tax law, no greater than nine per centum, for the alternative minimum tax analogous to that fixed under paragraph 1 of subsection (b) of such section, as such paragraph 1 existed prior to its repeal by section 24 of chapter 298 of the laws of

1985 (but subject to the amendments contained in paragraph 2 of subdivision (b) of section 11-643.5 of the administrative code of the city of New York), no greater than two and six-tenths mills per dollar of issued capital stock or the excess of average total assets over average total liabilities apportionable to such city, for the alternative minimum tax analogous to that fixed under such paragraph 1 as added by section 24 of such chapter, no greater than one-tenth of a mill, for the alternative minimum tax analogous to that fixed by paragraph 2 of such subsection, no greater than three percent, and for the alternative minimum tax analogous to that fixed by paragraph 3 of such subsection, no greater than one hundred twenty-five dollars and except that the appendix in such local laws may be amended for the purpose of conforming it with the United States internal revenue code or other federal laws relating to taxation as presently in effect or as they may be amended, and provided further, however, any such local law imposing a tax such as is imposed by such article 32 may be amended to conform it with the analogous provisions of subparagraph 11 of paragraph (a), subparagraph 13 of paragraph (b) and paragraphs (l), (m) and (n) of subdivision 8 of section 2 of section 1 of this chapter:

CITY BUSINESS TAX

PART I

GENERAL PROVISIONS

Section 1. Definitions.

PART II

GENERAL CORPORATION TAX

Section 2. Definitions.

3. Imposition of tax; exemptions.

4. Computation of tax.

4-a. Credit relating to stock transfer tax.

4-b. Credit relating to certain sales and compensating use taxes.

4-c. Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities.

(4-d) Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities.

- 4-e. Credit relating to certain sales and compensating use taxes.
- 4-f. Credit relating to certain sales and compensating use taxes on electricity used in manufacturing, processing or assembling.
- 4-h. Relocation and employment assistance credit.
- 4-i. Lower Manhattan relocation and employment assistance credit.
- 4-j. Relocation assistance credit per employee.
- 5. Reports.
- 6. Payment and lien of tax.
- 7. Declaration of estimated tax.
- 8. Payments on account of estimated tax.
- 9. Collection of taxes.
- 10. Limitations of time.

PART III

FINANCIAL CORPORATION TAX

SUBPART 1

TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

- Section 11. Definitions.
- *12. Tax based on net income; imposition; minimum tax; new corporations; dissolution; consolidations; mergers; etc.
 - 13. Years for which imposed.
 - 14. Ascertainment of gain or loss.
 - 15. Exchange of property.
 - 16. Exchange of property when no gain or loss is realized.
 - 17. Inventory.
 - 18. Net income defined.
 - 19. Computation of net income.
 - 20. Gross income defined.
 - 21. Deductions.
 - 22. Items not deductible.
- * Does not conform to section heading in text of law.

SUBPART 2

TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

- Section 23. Imposition of tax.
24. Years for which imposed.
25. Ascertainment of gain or loss; exchange of property.
26. Inventory.
27. Net income defined; computation.
28. Gross income defined.
29. Deductions.
30. Administration; procedure; provisions of law applicable.
31. Tax on production credit associations.

SUBPART 3

ADMINISTRATION FOR SUBPARTS 1 AND 2

- Section 32. Taxpayers' returns.
33. Consolidated returns.
34. Payment of tax.
35. Declaration of estimated tax; payments on account of estimated tax.
36. Real property taxable.

PART V

TRANSPORTATION CORPORATION TAX

- Section 61. Tax on transportation corporations and associations.
62. Additional tax on transportation corporations and associations.
63. Receivers, etc., conducting corporate business.
64. Service of process; limitations of time.
65. Exemption of Corporations Owned by a Municipality.
66. Reports of Corporations.
67. Payment of tax and penalties.
68. Taxable years to which taxes apply.
69. First reports for nineteen hundred sixty-six.

PART VI

(CORPORATE TAX PROCEDURE AND ADMINISTRATION)

- Section 71. Application of part.
72. Notice of Deficiency.
73. Assessment.
74. Limitations on Assessment.
75. Interest on underpayment.
76. Additions to tax and civil penalties.

77. Overpayment.
78. Limitations of credit or refund.
79. Interest on overpayment.
80. Petition to director of finance.
81. Review of director's decision.
82. Mailing rules; holidays.
83. Collection, levy and liens.
84. Transferees.
85. Jeopardy assessment.
86. Criminal penalties.
87. General powers of director of finance.
88. Secrecy required of official; penalty for violation.
89. Disposition of revenues.
90. Inconsistencies with other laws.
91. Effect of invalidity in part.

PART I

GENERAL PROVISIONS

Section 1. Definitions. When used in parts one through six:

1. "Taxpayer" means any corporation subject to tax;
2. "City" or "the city" means the city imposing the tax;
3. "State," "the state" or "this state" means the state of New York;
4. "Tax commission," "department of state," "department of taxation and finance," "department of public service," and "department of insurance," refers to agencies and departments of the state;
5. "Commission" means the tax commission of the state;
6. "Tax law," "insurance law," "private housing finance law," "public health law," "public housing law," "finance law," "general municipal

law," "public service law," "general corporation law," "business corporation law," "civil practice law and rules," "code of criminal procedure," and "banking law," refer to laws of the state;

7. "Attorney General," "superintendent of insurance," "commissioner of taxation and finance," "secretary of state," "commissioner of health," and "comptroller," refer to officials of the state;

8. "Director of finance" means the director of finance or other fiscal officer of the city charged with administration of excise taxes by the charter of the city or by other provision of law.

9. "Domestic corporation" means a corporation organized under the laws of the state; and

10. Unless a different meaning is clearly required, any term used in any title other than parts four and five shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in the title appendix hereinafter set forth or as included by reference to an appendix of another title enacted by the same local law. (The quotation of the aforesaid laws of the United States is intended to make them a part of any appropriate title and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to any of the titles.)

11. "Title," when used in any part except parts four or five, means all parts except parts four or five, and, when used in part four or part five, means the part in which it is used together with part one; provided, however, that, whenever it is used in a manner which clearly shows that it is intended to encompass all parts, it shall be so

construed.

PART II
GENERAL CORPORATION TAX

§ 2. Definitions. When used in this part:

1. "Corporation" includes a joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;

2. "Subsidiary" means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;

3. "Subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from subsidiaries, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this part or part three of this title, provided, however, that, in the discretion of the director of finance, there shall be deducted from subsidiary capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report, which are attributable to subsidiary capital;

4. "Investment capital" means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business, exclusive of subsidiary capital and stock issued by the taxpayer, provided, however, that, in the discretion of the director of finance there shall be deducted from investment capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report, which are attributable to investment capital;

5. "Investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, (a) in the discretion of the director of finance, any deductions allowable in computing entire net income which are attributable to investment capital or investment income, and (b) such portion of any net operating loss deduction allowable in computing entire net income, as the investment income, before such deduction, bears to entire net income, before such deduction, provided, however, that in no case shall investment income exceed entire net income;

6. "Business capital" means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report, except that, subject to the provisions of subdivision six of section four of this part, cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect;

7. "Business income" means entire net income minus investment income;

8. "Entire net income" means total net income from all sources which shall be the same as the taxpayer's entire federal taxable income computed without regard to any election under subchapter s of chapter one of the internal revenue code, except as hereinafter provided, and subject to any modification required by paragraph (d) of subdivision three of section four of this part.

(a) Entire net income shall not include:

(1) income, gains and losses from subsidiary capital which do not include the amount of a recovery in respect of any war loss;

(2) fifty per centum of dividends other than from subsidiaries;

(3) bona fide gifts;

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated

exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses; and

(5) any refund or credit of a tax imposed under this part, or imposed by article nine or article nine-A of the tax law, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this part for any prior year;

(6) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in paragraph (a) of subdivision one of section four hundred twenty-five-a of the insurance law, any item of income, gain, loss or deduction of such business which is the taxpayer's distributive or pro rata share for federal income tax purposes or which the taxpayer is required to take into account separately for federal income tax purposes.

(7) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

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

(9) the amount deductible pursuant to paragraph (j) of this subdivision; and

(10) upon the disposition of recovery property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate

of the amounts described in subparagraph eleven of paragraph (b) of this subdivision attributable to such property exceeds the aggregate of the amounts described in paragraph (j) of this subdivision attributable to such property.

(11) for taxable years ending after September 10, 2001, the amount deductible pursuant to paragraph (1) of this subdivision.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) the amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations,

(2) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in clauses one and two of paragraph (a) hereof,

(3) taxes paid or accrued to the United States on or measured by profits or income or to the state under article nine or nine-a of the tax law,

(4) taxes imposed under this part,

(4-a) (A) the entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only to the extent that such taxes are incurred and paid in market making transactions and (B) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to section four-b of this part.

(4-b) the amount allowed as an exclusion or deduction imposed by the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit or part thereof allowed pursuant to section four-c of this part with respect to a taxable year.

(4-c) the amount allowed as an exclusion or deduction imposed by the tax law in determining the entire taxable income which the taxpayer is

required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to section four-d of this part.

(4-d) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States Treasury Department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to section four-e of this part.

(4-e) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to section four-f of this part.

(5) ninety per centum of interest on indebtedness directly or indirectly owed to any stockholder or shareholder (including subsidiaries of a corporate stockholder or shareholder), or members of the immediate family of an individual stockholder or shareholder, owning in the aggregate in excess of five per centum of the issued capital stock of the taxpayer, except that such interest may, in any event, be deducted

(A) up to an amount not exceeding one thousand dollars,

(B) in full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization, to persons, who, prior to such reorganization, were bona fide creditors of the corporation or its predecessors, but were not stockholders or shareholders thereof,

(C) in full where the investment allocation percentage is applied to entire net income, and

(D) in full to the extent that it is paid to a federally licensed small business investment company;

(6) in the discretion of the director of finance, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital; and

(7) any amount by reason of the granting, issuing or assuming of a restricted stock option, as defined in the internal revenue code of nineteen hundred fifty-four, or by reason of the transfer of the share of stock upon the exercise of the option, unless such share is disposed of by the grantee of the option within two years from the date of the granting of the option or within six months after the transfer of such share to him;

(8) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in paragraph (a) of subdivision one of section four hundred twenty-five-a of the insurance law, such taxpayer's distributive or pro rata share of the allocated entire net income of such business as determined under sections fifteen hundred three and fifteen hundred four of the tax law, provided however, in the event such allocated entire net income is a loss, such taxpayer's distributive or pro rata share of such loss shall not be subtracted from federal taxable income in computing entire net income under this subdivision.

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

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

(11) for taxable years beginning after December thirty-first, nineteen

hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four the amount allowable as a deduction under section one hundred sixty-eight of the internal revenue code;

(12) upon the disposition of recovery property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property exceeds the aggregate of the amounts described in subparagraph eleven of this paragraph attributable to such property.

(13) for taxable years ending after September 10, 2001, in the case of qualified property described in paragraph 2 of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (n) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph 2 of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), the amount allowable as a deduction under section 167 of the internal revenue code.

(c) Entire net income shall include income within and without the United States;

(d) The director of finance may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer;

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity;

(f) A net operating loss deduction shall be allowed which shall be the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code or which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, except that (1) any net operating loss included in determining such deduction shall be adjusted

to reflect the inclusions and exclusions from entire net income pursuant to paragraphs (a), (b), (g) and (h) hereof, (2) such deductions shall not include any net operating loss sustained during any taxable year in which the taxpayer was not subject to the tax imposed by this part, (3) such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code, or the deduction for the taxable year which would have been allowable if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, and (4) any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such code as such section was in full force and effect on December thirty-first, nineteen hundred eighty;

(g) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste (as the term "industrial waste" is defined in section twelve hundred two of the public health law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section twelve hundred sixty-seven of the state public health law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the

air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) However, such deduction shall be allowed only

(A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the state commissioner of health or his designated representative, pursuant to the public health law, as complying with applicable provisions of the public health law, the state sanitary code and regulations, permits or orders issued pursuant thereto, and

(C) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation of the same property other than the deductions allowed by this paragraph (g) except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and

(D) where the election provided for in paragraph (d) of subdivision three of section four of this part has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year

in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the director of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section seventy-four.

(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the public health law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the director of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section seventy-four.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the United States treasury department for such taxable year;

(h) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, which had a federal adjusted basis on such date (or on the date of its sale or other disposition prior to January first, nineteen hundred sixty-six) lower than its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior thereto, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between---

(a) the amount of the taxpayer's federal taxable income, and

(b) the amount of the taxpayer's federal taxable income (if smaller than the amount described in (a)) computed as if the federal adjusted basis of each such property (on the sale or other disposition of which gain was derived) on the date of the sale or other disposition had been equal to either (i) its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six or (ii) the amount realized from its sale or disposition, whichever is lower; provided, however, that the total modification provided by this paragraph (h) shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property.

(i) If the period covered by a report under this part is other than the period covered by the report to the United States treasury department, entire net income shall be determined by multiplying the federal taxable income (as adjusted pursuant to the provisions of this part) by the number of calendar months or major parts thereof covered by the report under this part and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this part, the director of finance shall be authorized in his discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this part.

(j) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to recovery property the depreciation deduction allowable under section one hundred

sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(l) for taxable years ending after September 10, 2001, in the case of qualified property described in paragraph 2 of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (n) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph 2 of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September 10, 2001.

(m) for taxable years ending after September 10, 2001, upon the disposition of property to which paragraph (l) 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 11 of paragraph (a) and subparagraph 13 of paragraph (b) of this subdivision attributable to such property.

(n) for purposes of paragraphs (l) and (m) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph 2 of subsection k of section 168 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 10, 2001. 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.

9. (a) The term "calendar year" means a period of twelve calendar months (or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this part) ending on the thirty-first day of December, provided the taxpayer keeps its books on the basis of such period or on the basis of any period ending on any day other than the last day of a calendar month, or provided the taxpayer does not keep books, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a fiscal year to a calendar year, the period from the close of its last old fiscal year up to and including the following December thirty-first.

(b) The term "fiscal year" means a period of twelve calendar months (or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this part) ending on the last day of any month other than December, provided the taxpayer keeps its books on the basis of such period, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a calendar year to a fiscal year or from one fiscal year to another fiscal year, the period from the close of its last old calendar or fiscal year up to the date designated as the close of its new fiscal year.

10. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt.

§ 3. Imposition of tax; exemptions. 1. For the privilege of doing

business in the city in a corporate or organized capacity for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a tax, upon the basis of its entire net income, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as hereinafter provided, on or before the fifteenth day of March next succeeding the close of each such year, or, in the case of a taxpayer which reports on the basis of a fiscal year, within two and one-half months after the close of such fiscal year, and shall be paid as hereinafter provided.

2. The holding of real property in the city shall be deemed to be doing business in the city within the meaning of this part. A corporation shall not be deemed to be doing business in the city, for the purposes of this part, by reason of (a) the maintenance of cash balances with banks or trust companies in the city, or (b) the ownership of shares of stock or securities kept in the city, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) any combination of the foregoing activities.

3. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any corporation, shall be subject to the tax imposed by this part in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation. A dissolved corporation which continues to conduct business shall also be subject to the tax imposed by this part.

4. Corporations subject to tax under part three, part four or part five, or under a local law of the city imposing a tax on utilities, and any trust company organized under a law of this state all of the stock

of which is owned by not less than twenty savings banks organized under a law of this state, and housing companies organized and operating pursuant to the provisions of article two, article four or article five of the private housing finance law, shall not be subject to tax under this part; provided, however, that corporations, other than utility corporations subject to the supervision of the state department of public service, which are subject to tax under a local law of the city imposing a tax on vendors of utility services shall be subject to tax under this part on that percentage of their entire net income allocable to the city under section four which their receipts other than those taxable under such local law taxing vendors of utility services is of their total receipts.

5. The tax imposed by subdivision one of this section, with the modifications provided by subdivision six of this section, is imposed for each calendar or fiscal year beginning with calendar or fiscal years ending in or with the calendar year nineteen hundred sixty-six.

6. (a) The tax for any taxable year ending prior to December thirty-first, nineteen hundred sixty-six shall be an amount equal to the tax imposed by subdivision one of this section for such taxable year, multiplied by the number of months (or major portions thereof) in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months (or major portions thereof) in such taxable year.

(b) In lieu of the method of computation of tax prescribed in paragraph (a) of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending prior to December thirty-first, nineteen hundred sixty-six, which portion falls within the calendar year nineteen hundred sixty-six, it may elect to compute the tax for such taxable year by determining entire net income on the basis of the entire taxable income which it would have reported for federal income tax purposes had it filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of its actual taxable year and such taxable year beginning January first, nineteen hundred sixty-six, shall be deemed to be the period covered by its report, except that in computing such tax

any portion of a capital loss which results from a capital loss carryover and any net operating loss deduction, as modified pursuant to paragraph (f) of subdivision eight of section two shall be reduced by the same part of such portion of such capital loss or of such net operating loss deduction (as the case may be) as the number of months (or major portions thereof) in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in such taxable year.

§ 4. Computation of tax. * 1. The tax imposed by subdivision one of section three of this part shall be, in the case of each taxpayer: (a) a tax (1) for taxable years beginning on or after January first, nineteen hundred seventy-eight but before January first, nineteen hundred eighty-seven, computed at the rate of nine per centum, and for taxable years beginning on or after January first, nineteen hundred eighty-seven, computed at the rate of eight and eighty-five one hundredths per centum on its entire net income, or the portion thereof allocated within the city as hereinafter provided, subject to any modification required by paragraph (d) of subdivision three of this section, or (2) computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be four-tenths of one mill, or (3) for taxable years beginning on or after January first, nineteen hundred seventy-eight but before January first, nineteen hundred eighty-seven, computed at the rate of nine per centum, and for taxable years beginning on or after January first, nineteen hundred eighty-seven, computed at the rate of eight and eighty-five one hundredths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject

to any modification required by paragraph (d) of subdivision three of this section, or (4) one hundred twenty-five dollars, whichever is the greatest, plus (b) a tax computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, or which elects to compute its tax pursuant to paragraph (b) of subdivision six of section three, the exemption allowed in clause three of paragraph (a) shall be prorated according to the period such taxpayer was subject to tax or, in the case of such an election, the period for which its entire net income is determined pursuant to such paragraph (b) of subdivision six of section three.

* NB Effective until December 31, 2020

* 1. The tax imposed by subdivision one of section three of this part shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of five and one-half per centum, or as an alternative for taxable years beginning on or after January first, nineteen hundred seventy-one, at the rate of six and seven-tenths per centum, on its entire net income, or the portion thereof allocated within the city as hereinafter provided, subject to any modification required by paragraph (d) of subdivision three of this section, or (2) computed at one mill for each dollar of its total business and investment capital, or the portion thereof allocated within the city as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be one-quarter of one mill, or (3) computed at the rate of five and one-half per centum, or as an alternative for taxable years beginning on or after January first, nineteen hundred seventy-one, at the rate of six and seven-tenths per centum, on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraph (d) of subdivision three of this section, or (4) twenty-five dollars, whichever is the greatest, plus (b)

a tax computed at the rate of one-half mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, or which elects to compute its tax pursuant to paragraph (b) of subdivision six of section three, the exemption allowed in clause three of paragraph (a) shall be prorated according to the period such taxpayer was subject to tax or, in the case of such an election, the period for which its entire net income is determined pursuant to such paragraph (b) of subdivision six of section three.

* NB Effective December 31, 2020

2. The amount of subsidiary capital, investment capital and business capital shall each be determined by taking the average fair market value of the gross assets included therein (less, in the case of business capital, average liabilities deductible therefrom which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report), and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve.

3. The portion of the entire net income of a taxpayer to be allocated within the city shall be determined as follows:

(a) multiply its business income by a business allocation percentage to be determined by

(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property within the city during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property wherever situated during such period;

(2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from

(A) sales of its tangible personal property located within the city at

the time of the receipt of or appropriation to the orders, where shipments are made to points within the city,

(B) sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the city where the orders were received or accepted within the city and where shipments are made to points within the city,

(C) sales of its tangible personal property located within the city at the time of the receipt of or appropriation to the orders where shipment is made to points outside of the city and sales of its tangible personal property (except sales described in clause (B)) located without the city at the time of the receipt of or appropriation to the orders where shipment is made to points within the city, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause,

(D) sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the city, where the orders were received or accepted within the city and where shipment is made between points outside the city, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause. For purposes of this clause and clause (B) an order shall be deemed received or accepted within the city if it has been received or accepted by an employee, agent, agency or independent contractor chiefly situated at, connected with, by contract or otherwise, or sent out from a permanent or continuous place of business of the taxpayer within the city,

(E) services performed within the city,

(F) rentals from property situated and royalties from the use of patents or copyrights, within the city, and

(G) all other business receipts earned within the city, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business transactions, whether within or without the city;

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of

employees within the city, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the city, except general executive officers, and

(4) adding together the percentages so determined and dividing the result by the number of percentages; provided, however, that if the taxpayer does not have a regular place of business outside the city other than a statutory office, the business allocation percentage shall be one hundred per centum; and

(b) multiply its investment income by an investment allocation percentage to be determined by

(1) multiplying the amount of its investment capital invested in each stock, bond or other security (other than governmental securities) during the period covered by its report by the percentage, if any, of the entire capital or the issued capital stock, or the gross direct premiums, or the net income, as the case may be, of the issuer or obligor thereof required to be allocated within the city on the report or reports, if any, required of any such issuer or obligor under part II, part III, part IV, or part V or under a local law of the city imposing a tax on utilities for the preceding year, provided, however, that for taxable years ending in or with calendar year nineteen hundred sixty-six, such percentage shall be presumed to be that percentage, if any, of the entire capital or the issued capital stock, or the gross direct premiums, or the net income, as the case may be, of the issuer or obligor thereof required to be allocated within the state on the report or reports, if any, required of any such issuer or obligor under the tax law or the insurance law for the preceding year, unless the taxpayer establishes the actual percentage which such issuer or obligor would have been required to allocate within the city had part II, part III, part IV, or part V been in effect for such year, or which such issuer or obligor did allocate within the city under a local law of the city imposing a tax on utilities, but without regard to any minimum,

(2) adding together the sum so obtained, and

(3) dividing the result so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities (other than obligations of the United States and its instrumentalities and obligations of the state of New York, its

political subdivisions and its instrumentalities); provided, however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the report, only such portion of such capital shall be taken into account; and provided further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts, on obligations of the United States and its instrumentalities and on obligations of the state of New York, its political subdivisions and its instrumentalities shall be multiplied by its business allocation percentage; and

(c) add the products so obtained.

(d) At the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the city either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one items of property.

(1) Depreciation with respect to any property such as described in subparagraph three of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation of the same property, and the total of all deductions allowed pursuant to the preceding sentence in any taxable year or years with respect to any property shall not exceed its cost or other basis.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in subparagraph three of this paragraph which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that entire net income for the taxable year and all succeeding taxable years be computed without the deduction of any such expenditures and without any deduction for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is

allowable pursuant to this subparagraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, a proportionate part of such expenditures shall be deductible. If all or part of such expenditures with respect to any property shall have been deducted as provided herein, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in its report for the first taxable year during which it occurs, and the director of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation regardless of the time limitations set forth in section seventy-four of this title.

(3) Such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-five, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after such date.

(4) If the deductions allowable for any taxable year, pursuant to this subdivision, exceed the portion of the taxpayer's entire net income allocated to the city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to the city for such year or years.

(5) In any taxable year when property is sold or otherwise disposed

of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of this paragraph, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of this paragraph. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

4. The portion of the business capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the business allocation percentage determined as hereinabove provided.

5. The portion of the investment capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the investment allocation percentage determined as hereinabove provided.

6. Any taxpayer not taxed upon the basis of a combined report, the investment income of which is less than twenty-five per centum of its entire net income and the investment capital of which is less than twenty-five per centum of its total business and investment capital, may at its election apply its business allocation percentage to its entire net income and its total business and investment capital. Any taxpayer not taxed upon the basis of a combined report, the investment income of which is more than eighty-five per centum of its entire net income and the investment capital of which is more than eighty-five per centum of its total business and investment capital, may at its election apply its investment allocation percentage to its entire net income and its total business and investment capital. Any taxpayer not taxed upon the basis of a combined report, the subsidiary capital of which (computed without regard to this sentence) is more than eighty-five per centum of its total capital, exclusive of cash on hand and on deposit, obligations of

the United States and its instrumentalities and obligations of the state of New York, its political subdivisions and its instrumentalities, may at its election treat as subsidiary capital a proportion of such cash and obligations not in excess of the proportion of its subsidiary capital (so computed) to its total capital.

7. The portion of the subsidiary capital of a taxpayer to be allocated within the city shall be determined by (a) multiplying the amount of its subsidiary capital invested in each subsidiary during the period covered by its report (or, in the case of any such capital so invested during only a portion of such period, such portion of such capital) by the percentage, if any, of the entire capital or the issued capital stock, or the gross direct premiums, or the net income, as the case may be, of such subsidiary required to be allocated within the city on the report or reports, if any, required of such subsidiary under this title for the preceding year, or which would have been required for such year had this title been in effect, but without regard to any minimum, (b) multiplying the proportion of cash and obligations of the United States and its instrumentalities and obligations of the state of New York, its political subdivisions and its instrumentalities treated as subsidiary capital, by the weighted average of the percentages used in clause (a) hereof, and (c) adding together the sums so obtained.

8. If it shall appear to the director of finance that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the city, the director of finance shall be authorized in his discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage to adjust it by excluding one or more assets in computing such percentage provided

the income therefrom is also excluded in determining entire net income. The director of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

9. If it shall appear to the director of finance that any business allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the city, the director of finance shall be authorized in his discretion to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income. The director of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

10. For purposes of this section the taxpayer's real property shall include not only such property owned by the taxpayer but also such property rented to it.

§ 4-a. Credit relating to stock transfer tax. (1) A taxpayer shall be allowed a credit, to be credited or refunded in the manner hereinafter provided in this section, against the tax imposed by this part. The amount of such credit shall be fifty per cent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer (except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of such tax law).

(2) For purposes of this subsection:

(a) the term "taxpayer" shall mean any corporation subject to tax under this part registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in paragraph (b) of this subdivision, and

(b) the term "market making transaction" shall mean any transaction involving a sale (including a short sale) by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business (including transfers which are part of an underwriting),

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to subparagraph (ii) (c) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(3) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section seventy-seven of this title, except as otherwise provided in subdivision three of section six and subdivision eleven of section eight of this part; provided, however, that the provisions of this chapter notwithstanding, the amount to be refunded pursuant to this section shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision three of section seventy-nine of this title notwithstanding, interest shall be allowed and paid on the

overpayment of the credit under this section from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this section has been filed, whichever is later.

(4) Provided, however, that the credit provided under this subsection shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subsection (determined without regard to the provisions of this subdivision) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is allowed. No credit shall be allowed under this subsection with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

§ 4-b. Credit relating to certain sales and compensating use taxes.

(1) In addition to the credit allowed by section four-a of such chapter, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credits or refunds of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use

taxes allowed or allowable against the taxes imposed by any local law of the city imposing a tax on utilities and vendors of utility services, for any periods embraced within the taxable year of the taxpayer under this part. (2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. (3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of section four-b of such chapter in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section three of such chapter, and such amount shall be subtracted in computing entire net income for the taxable year.

§ 4-c. Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded, without interest, in the manner hereinafter provided in this section. The amount of such credit shall be:

(A) A maximum of three hundred dollars for each commercial employment opportunity and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer which relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event.

The director of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used by a taxpayer seeking the credit provided hereunder.

(B) Definitions: When used in this section, "Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving and installation of machinery and equipment into the city from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section three, and such amount shall be subtracted in

computing entire net income for the taxable year.

§ (4-d) Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded, without interest, in the manner hereinafter provided in this section.

(A) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities; and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this section. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this section.

The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for herein shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest." In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will

foster the economic recovery and economic development of the city.

The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation, whichever period is shorter.

(B) Definitions: When used in this section, "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Industrial and commercial incentive board" means the board created pursuant to section four hundred eighty-nine-~~nn~~ of the real property tax law.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section seventy-seven of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section three of this part, and such amount shall be subtracted in computing entire net income for the taxable year.

§ 4-e. Credit relating to certain sales and compensating use taxes.

(1) in addition to any other credit allowed by this section, a taxpayer

shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be equal to one-half the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-one, less one-half of any credits or refunds of such taxes, with respect to the purchase or use by the taxpayer of (i) parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting or for use directly and predominantly in or on telephone central office equipment or station apparatus or comparable telegraph equipment where such equipment or apparatus is used directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, and (ii) the service of installing, repairing, maintaining or servicing the tangible personal property described in section four-b of this part, including the parts with a useful life of one year or less, tools and supplies described in clause (i) of this subdivision. The foregoing credit shall be reduced by the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by any local law of the city imposing a tax on utilities and vendors of utility services, for any periods embraced within the taxable year of the taxpayer under this part.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest in accordance with the provisions of section seventy-seven of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section three of this part, and such amount shall be subtracted in computing entire net income for the taxable year.

§ 4-f. Credit relating to certain sales and compensating use taxes on electricity used in manufacturing, processing or assembling. (1) (a) In addition to any other credit allowed by this part, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-four, less any credits or refunds of such taxes, with respect to the purchase or use by the taxpayer of electricity or electric service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembling. Provided, however, the amount of the credit allowed by this paragraph shall be reduced by the amount of any rebate or rebates received during the taxpayer's taxable year pursuant to a local law enacted in accordance with article two-G of the general city law.

(b) In addition to any other credit allowed by this part, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the percentage specified below of the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-eight, less any credit or refund of such taxes, with respect to the purchase or use by a non-residential energy user, as such term is defined in article two-G of the general city law, of electricity or electric service purchased at retail from the power authority of the state of New York or the port authority of the state of New York and New Jersey, provided, however, that no credit shall be allowed with respect to purchases from such port authority unless it shall be an "eligible vendor of energy services", as defined in paragraph one of subdivision (c) of section twenty-five-v of the general city law, and shall have obtained a certification of eligibility in accordance with subdivision (b) of section twenty-five-w of such law; during the period commencing July first, nineteen hundred

eighty-eight and ending June thirtieth, nineteen hundred eighty-nine the credit shall be in an amount equal to twenty-five per centum of such sales and compensating use taxes imposed; during the period commencing July first, nineteen hundred eighty-nine and ending June thirtieth, nineteen hundred ninety the credit shall be in an amount equal to fifty per centum of such taxes imposed; during the period commencing July first, nineteen hundred ninety and ending June thirtieth, nineteen hundred ninety-one the credit shall be in an amount equal to seventy-five per centum of such taxes imposed; and during the period commencing July first, nineteen hundred ninety-one and thereafter the credit shall be in an amount equal to one hundred per centum of such taxes imposed.

(c) In addition to any other credit allowed by this part, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the percentage specified below of the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-eight, less any credit or refund of such taxes, with respect to the purchase or use by a non-residential fuel user of fuel or fuel service except fuel used to operate motor vehicles; during the period commencing July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred eighty-nine the credit shall be in an amount equal to twenty-five per centum of such sales and compensating use taxes imposed, during the period commencing July first, nineteen hundred eighty-nine and ending June thirtieth, nineteen hundred ninety the credit shall be in an amount equal to fifty per centum of such taxes imposed; during the period commencing July first, nineteen hundred ninety and ending June thirtieth, nineteen hundred ninety-one the credit shall be in an amount equal to seventy-five per centum of such taxes imposed; and during the period commencing July first, nineteen hundred ninety-one and thereafter the credit shall be in an amount equal to one hundred per centum of such taxes imposed. For purposes of this paragraph, the term "non-residential fuel user" shall mean any non-residential user of fuel, except a government agency or instrumentality thereof, public benefit

corporation, or any entity that is exempt from the sales tax imposed pursuant to section eleven hundred seven of the tax law, provided that the term "non-residential fuel user" shall not include an owner or operator of residential income producing property, except a hotel.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section three of this part, and such amount shall be subtracted in computing entire net income for the taxable year.

§ 4-h. Relocation and employment assistance credit. (1) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-z of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to subdivision (b) of such section twenty-five-z a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to subdivision (b) of such section twenty-five-z a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section twenty-five-y of the general city law, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined

pursuant to subdivision (j) of section twenty-five-y of the general city law is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this section to any taxpayer that has elected pursuant to subdivision (d) of section twenty-five-z of the general city law to take such credit against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law; and provided that in the case of an eligible business that has obtained pursuant to subdivision (b) of such section twenty-five-z certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section twenty-five-y of the general city law. For purposes of this section, the terms "eligible aggregate employment shares", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-y of the general city law.

(2) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate

employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction, the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in subdivision four of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(3) The credit allowable under this section shall be deducted prior to the deduction of any other credit allowed by this part.

(4) In the case of a taxpayer that has obtained a certification of eligibility pursuant to subdivision (b) of section twenty-five-z of the general city law dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section twenty-five-y of the general city law, the credits allowed under this section, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to subdivision one of this section, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this subdivision shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the

date of such relocation is on or after July first, two thousand.

§ 4-i. Lower Manhattan relocation and employment assistance credit.

(1) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-ee of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section twenty-five-ee of the general city law to take such credit against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law. For purposes of this subdivision, the terms "eligible aggregate employment shares," "eligible premises," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-dd of the general city law.

(2) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth taxable year during which such eligible aggregate employment shares are maintained with respect to such

premises.

(3) Except as provided in subdivision four of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this section, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowed under this section shall be deducted after the credits allowed by section four-h of this part, but prior to the deduction of any other credit allowed by this part.

§ 4-j. Relocation assistance credit per employee. (1) In addition to any other credit allowed by this part other than a credit allowed by section four-h of this part, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-gg of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services. For purposes of this section, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-ff of the general city law.

(2) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to eligible premises

to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the ten succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the tenth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the tenth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such tenth taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in subdivision four of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this section, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowed under this section shall be deducted prior to the deduction of any other credit allowed by this part, except as otherwise provided by law.

§ 5. Reports. 1. Every corporation having an officer, agent or representative within the city, shall annually on or before March fifteenth transmit to the director of finance a report in a form prescribed by him (except that a corporation which reports on the basis of a fiscal year shall transmit its report within two and one-half

months after the close of its fiscal year), setting forth such information as the director of finance may prescribe and every taxpayer which ceases to do business in the city or to be subject to the tax imposed by this part shall transmit to the director of finance a report on the date of such cessation or at such other time as he may require covering each year or period for which no report was theretofore filed. Every taxpayer shall also transmit such other reports and such facts and information as the director of finance may require in the administration of this part. The director of finance may grant a reasonable extension of time for filing reports whenever good cause exists.

With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the third month following the close of such taxable year or the sixtieth day following the date this title becomes effective, whichever is later.

An automatic extension of three months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by either of the preceding paragraphs, whichever is applicable, such taxpayer files with the director of finance an application for extension in such form as he may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the director of finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this part.

3. If the amount of taxable income for any year of any taxpayer, or of any shareholder of any taxpayer, which has elected to be taxed under subchapter s of chapter one of the internal revenue code, as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in taxable income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, or such computation or recomputation, or such execution of such notice of waiver and the changes or corrections of his federal taxable income on which it is based, within ninety days after such execution or the final determination of such change or correction or renegotiation, or such computation, or recomputation or on its next report under this part, or as required by the director of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended report with the director of finance.

4. In the discretion of the director of finance, any taxpayer which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the director of finance may require; provided, however, that no combined report covering any corporation not a taxpayer shall be required unless the director of finance deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or

transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this part. In the case of a combined report the tax shall be measured by the combined entire net income or combined capital, of all the corporations included in the report. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stock holdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated.

5. In case it shall appear to the director of finance that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or capital of the taxpayer within the city is improperly or inaccurately reflected, the director of finance is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided only that any income directly traceable thereto be also excluded from entire net income, so as equitably to determine the tax. Where (a) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (b) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the director of finance may include in the entire net income of the taxpayer the fair profits, which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

6. An action may be brought at any time by the corporation counsel at the instance of the director of finance as agent and trustee for the

city to compel the filing of reports due under this part.

7. Reports shall be preserved for five years, and thereafter until the director of finance orders them to be destroyed.

8. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this part was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 6. Payment and lien of tax. 1. To the extent the tax imposed by section three of this part shall not have been previously paid pursuant to section eight of this part,

(a) such tax, or the balance thereof, shall be payable to the commissioner of finance in full at the time the report is required to be filed, and

(b) such tax, or the balance thereof, imposed on any taxpayer which ceases to do business in the city or to be subject to the tax imposed by this part shall be payable to the commissioner of finance at the time the report is required to be filed; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. If the taxpayer, within the time prescribed by section five of this part, shall have applied for an automatic extension of time to file its annual report and shall have paid to the commissioner of finance on or before the date such application is filed an amount properly estimated as provided by said section, the only amount payable in addition to the tax shall be interest at the rate set by the commissioner of finance

pursuant to section eighty-seven of part six, or, if no rate is set, at the rate of six per centum per annum upon the amount by which the tax, or the portion thereof payable on or before the date the report was required to be filed, exceeds the amount so paid. For purposes of the preceding sentence:

(1) an amount so paid shall be deemed properly estimated if it is either (A) not less than ninety per centum of the tax as finally determined (computed without regard to any credit allowable under section four-a of this part), or (B) not less than the tax shown (computed without regard to any credit allowable under section four-a of this part) on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a report is required to be filed shall be determined without regard to any extension of time for filing such report.

2. The director of finance may grant a reasonable extension of time for payment of any tax imposed by this part under such conditions as it deems just and proper.

3. Subdivision one of this section shall apply to a taxpayer which has a right to a credit pursuant to section four-a of this part, except that the tax, or balance thereof, payable to the director of finance in full pursuant to subdivision one of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in section four-a of this part were not allowed.

§ 7. Declaration of estimated tax. 1. Every taxpayer subject to the tax imposed by section three of this part shall make a declaration of its estimated tax for the current privilege period, containing such information as the director of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by section three of this part for the current privilege period, less the amount which it estimates to be the

sum of any credits allowable against the tax other than the credit allowable under section four-a of this part.

3. A declaration of estimated tax shall be filed on or before June fifteenth of the current privilege period in the case of a taxpayer which reports on the basis of a calendar year, except that if the requirements of subdivision one are first met:

(a) after June first and before October second of such current privilege period, the declaration shall be filed on or before October fifteenth, or

(b) after October first of such current privilege period, the declaration shall be filed on or before January fifteenth of the succeeding calendar year.

Notwithstanding any other provision of this subdivision, no declaration need be filed prior to the sixtieth day after the date this title becomes effective.

4. A taxpayer may amend a declaration under regulations of the director of finance.

5. If, on or before February fifteenth of the succeeding year in the case of a taxpayer which reports on the basis of a calendar year, a taxpayer files its report for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the report,

(a) such report shall be considered as its declaration if no declaration was required to be filed during the calendar or fiscal year for which the tax was imposed, but is otherwise required to be filed on or before the fifteenth day of the first month of the succeeding year pursuant to subdivision three, and

(b) such report shall be considered as the amendment permitted by subdivision four to be filed on or before the fifteenth day of the first month of the succeeding year if the tax shown on the report is greater than the estimated tax shown on a declaration previously made.

6. This section shall apply to privilege periods of twelve months

other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

7. If the privilege period for which a tax is imposed by section three of this part is less than twelve months, every taxpayer required to make a declaration of estimated tax for such privilege period shall make such a declaration in accordance with regulations of the director of finance.

8. The director of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as it may require.

§ 8. Payments on account of estimated tax. 1. Every taxpayer subject to the tax imposed by section three of this part shall pay with the report required to be filed for the preceding privilege period, if any, or with an application for extension of the time for filing such report, an amount equal to twenty-five per centum of the preceding year's tax, computed without regard to the credits provided for in section four-b, four-c, four-d, four-e, four-f, four-g and four-h of this part if such preceding year's tax exceeded one thousand dollars.

2. The estimated tax with respect to which a declaration for such privilege period is required shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following October fifteenth, and one on the following January fifteenth.

(b) If the declaration is filed after June fifteenth and not after October fifteenth of such privilege period, and is not required to be filed on or before June fifteenth of such period, the estimated tax shown on such declaration, after applying thereto the amount, if any,

paid during the same privilege period pursuant to subdivision one, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following January fifteenth.

(c) If the declaration is filed after October fifteenth of such privilege period, and is not required to be filed on or before October fifteenth of such privilege period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect of such privilege period pursuant to subdivision one, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

3. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October fifteenth of the privilege period, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

4. Any amount paid pursuant to subdivision one or the first sentence of subdivision three shall be applied after payment as a first installment against the estimated tax of the taxpayer for the current privilege period shown on the declaration required to be filed pursuant to section seven of this part or, if no declaration of estimated tax is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax shown on the report required to be filed by the taxpayer for such privilege period.

5. Notwithstanding the provisions of section seventy-nine of this title or of section three-a of the general municipal law, if an amount paid pursuant to subdivision one exceeds the tax shown on the report

required to be filed by the taxpayer for the privilege period during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the rate set by the commissioner of finance pursuant to section eighty-seven of part six, or, if no rate is set, at the rate of four per centum per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the privilege period, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a carryback of a net operating loss in a subsequent privilege period.

6. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by section three of this part for the preceding calendar or fiscal year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the report required to be filed for such preceding calendar or fiscal year, the amount properly estimated pursuant to section seven of this part as the tax imposed upon the taxpayer for such calendar or fiscal year.

7. This section shall apply to a privilege period of less than twelve months in accordance with regulations of the director of finance.

8. The provisions of this section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

9. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as it may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however that interest at the rate set by the commissioner of finance

pursuant to section eighty-seven of part six, or, if no rate is set, at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

10. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

11. The portion of an overpayment attributable to a credit allowable pursuant to section four-a of this part may not be credited against any payment due under this section.

§ 9. Collection of taxes. Every foreign corporation (other than a moneyed corporation) subject to the provisions of this part, except a corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this part may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon him. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon him to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed,

signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this part, may be made by either (a) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (b) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

§ 10. Limitations of time. The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this part, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to

be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

PART III
FINANCIAL CORPORATION TAX

SUBPART 1
**TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS
AND SAVINGS AND LOAN ASSOCIATIONS**

§ 11. Definitions. When used in this subpart:

1. The term "financial corporation" means every corporation doing a banking business as defined in this section, other than a national banking association, a trust company all of the capital stock of which is owned by not less than twenty savings banks organized under a law of this state, or a corporation taxable under part two of this title, and shall include the mortgage facilities corporation created by chapter five hundred sixty-four of the laws of nineteen hundred fifty-six.

2. The word "paid, " for the purpose of the deductions and credits under this subpart, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed, under this subpart. The term "received," for the purpose of the computation of net income under this subpart means "received or accrued" and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which

the net income is computed under this subpart.

3. The word "dividend" means any distribution made by a corporation to its shareholders or members, out of its earnings or profits, whether in cash, or in property other than stock of the corporation.

4. The words "doing a banking business" means doing such business as a corporation may be created to do under articles three, five, five-a, six and seven of the banking law, or doing any business which a corporation is authorized by such articles to do.

5. The words "foreign banker doing a banking business" in the city, include every foreign corporation doing a banking business in the city, except a national banking association.

6. The words "savings and loan association" means every corporation doing such business as a corporation may be created to do under article ten of the banking law, including every federal savings and loan association organized under authority of the United States.

§ 12. Tax based on net income; imposition; minimum tax; new incorporations; dissolution; consolidations; mergers; etc. 1. For the privilege of doing business in the city:

(a) Every bank and savings and loan association organized under the authority of this state;

(b) Every trust company incorporated, organized or formed under, by or pursuant to a law of the state, other than a trust company all of the stock of which is owned by not less than twenty savings banks organized under a law of the state, and every domestic corporation authorized to do a trust company's business solely or in connection with any other business, under a general or special law of the state;

(c) Every other domestic financial corporation;

(d) Every incorporated foreign banker doing a banking business and every other foreign financial corporation; and

(e) Every federal savings and loan association located within the city,

shall annually pay a tax at the rate of four and one-half per centum except that for the years nineteen hundred seventy-one and those following, as an alternative, at the rate of five and sixty-three one hundredths per centum, to be computed as provided in this subpart, upon the basis of its net income for each calendar year, beginning with the calendar year nineteen hundred sixty-six, next preceding the date when such tax becomes due and, if the taxpayer is required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section thirty-five of this part, upon the basis of its net income for the calendar year with respect to which such declaration is required to be filed.

2. Every such corporation for the privilege of doing business in the city and every federal savings and loan association located in the city shall be subject to a minimum tax of not less than ten dollars and not less than one mill or, as an alternative for the years nineteen hundred seventy-one and those following, a minimum tax of not less than twelve and one-half dollars and not less than one and one quarter mills upon each dollar of such a part of its issued capital stock on the last day of the calendar year preceding that in which such tax becomes due, at its face value, as the gross income of such corporation derived from business carried on within the city, during such calendar year, bears to its gross income derived from all business, both within and without the city, during said year, but if such a corporation has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the director of finance; except that a savings bank and savings and loan association shall be subject to a minimum tax of not less than ten dollars and not less than an amount equal to two per centum of the amount of interest or dividends credited by it by depositors or shareholders during the calendar year preceding that in which such tax becomes due or, as an alternative, for the years nineteen hundred seventy-one and those following, a minimum tax of not less than twelve and one-half dollars and not less than an amount equal to two and one-half per centum of the amount of interest or dividends credited to by it to depositors or shareholders during the calendar year preceding that in which such tax becomes due, provided, that, in determining such amount, each interest

or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of two per centum per annum, whichever is less, and except also that in the case of a trust company or savings bank incorporated in the calendar year preceding that in which its first return under this subpart shall be due and after the thirtieth day of June in such year, the minimum tax, computed as in this subdivision provided, shall be reduced one-twelfth for each month, or major portion thereof, subsequent to said thirtieth day of June during which such trust company or savings bank did not exercise the privilege of doing business in the city.

3. For the privilege of doing business in the city, every such domestic corporation, except trust companies and savings banks, shall be subject to a tax for the calendar year in which its organization certificate is filed, and, for the privilege of doing business in the city, every such foreign corporation shall be subject to a tax for the calendar year in which it first does business in the city, and, every federal savings and loan association located within the city shall be subject to a tax for the calendar year in which it first becomes located within the city, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such calendar year, and the issued capital stock shall be taken as of the last day of such calendar year; provided, however, that the tax so computed shall be reduced one-twelfth for each month, or major portion thereof, in such calendar year, during which such corporation was not doing business in the city, or, if a federal savings and loan association, was not located in the city, and in no event shall the tax be less than ten dollars or, as an alternative, for the year nineteen hundred seventy-one and those following, not less than twelve and one-half dollars.

4. For the privilege of doing business in the city, every such trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall be subject to a tax for such period, computed in the same manner and at

the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such period; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the last day of such period; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or major portion thereof, in such period, during which such trust company or savings bank was not doing business in the city, and in no event shall the tax be less than ten dollars or, as an alternative, for the year nineteen hundred seventy-one and those following, not less than twelve and one-half dollars.

5. For the privilege of doing business in the city, every such corporation, except trust companies and savings banks, which shall be dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with another corporation taxable under this subpart and, every such foreign corporation which shall cease to do business in the city during the same period, and every federal savings and loan association which ceases to be located in the city during the same period, and shall not become merged or consolidated with another corporation taxable under this subpart, shall pay a tax for the period from the thirty-first day of December up to the time of dissolution, ceasing to do business in the city, or ceasing to be located in the city, as the case may be, equal to that which would have been payable had it not been dissolved, ceased to do business in the city, or ceased to be located in the city, except that such tax shall be reduced one-third and an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was not doing business in the city, or was not located in the city, and in no event shall the tax be less than ten dollars or, as an alternative, for the year nineteen hundred seventy-one and those following, not less than twelve and one-half dollars. If such dissolution or cessation occurs between the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by section thirty-two of this part, it may file a claim for refund as provided in section seventy-eight of

this title, showing any reduction in tax to which it may be entitled as provided in the preceding sentence; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the director of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than theretofore amount heretofore paid, the excess shall be refunded by the comptroller as provided in subdivision one of section seventy-seven of this title.

6. Every such trust company and savings bank, which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under this subpart, shall, if dissolution takes place between the thirtieth day of June and the succeeding first day of January, be subject to a tax, for that part of such period in which it had been doing business, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for the calendar year in which such dissolution occurs; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the date of dissolution; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or major portion thereof, between the date of dissolution and the succeeding first day of January. If dissolution occurs between the thirty-first day of December and the succeeding sixteenth day of March, such trust company and savings bank shall be subject to the same tax that would have been due from it on or before the fifteenth day of March had it not been dissolved, except that such tax shall be reduced one-twelfth for each month, or major portion thereof, from the date of dissolution to the succeeding first day of July, and shall be for the period beginning on the preceding first day of July and ending on the date of dissolution. In no event shall the tax under this subdivision be less than ten dollars or, as an alternative, for the year nineteen hundred seventy-one and those following, not less than twelve and one-half dollars.

7. In the case of a consolidation or merger of taxpayers, or in case a national bank taxable under subpart two of this part shall be

consolidated or merged with a taxpayer under this subpart, or in case of a series of such transactions, there shall be added to the net income of the taxpayer resulting from such consolidations or mergers the net income of the taxpayers which are consolidated or merged for the period for which the taxpayer resulting from such consolidation or merger is required to render any return under this subpart, except that net income shall not be included if it has already been used as the basis for a tax under this subpart, and the tax payable on the filing of such return shall be based upon the entire net income reported therein. The acquisition by a taxpayer, directly or indirectly, of the assets or franchises of another taxpayer or national bank shall be deemed a merger for the purposes of this section.

8. The tax imposed by this subpart shall be for the calendar year next preceding the year in which it becomes due; except that with respect to corporations subject to a tax imposed under subdivisions three, four, five or six of this section, the tax shall be for the period therein specified, and except that with respect to corporations required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section thirty-five of this part, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made.

9. In the event that it shall be finally determined by a court of competent jurisdiction that the taxes imposed on national banking associations by subpart two of this part are unconstitutional or invalid for the reason that they are not in conformity with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this subpart, every corporation that otherwise would have been subject to tax under this subpart shall be subject to the tax imposed under part two as of the effective date of part two, and all of the provisions of part two, unless clearly inappropriate, shall be applicable except subdivision four of section three; and, in such event, any payments made, reports or returns filed or any act of the director of finance or

of a taxpayer purportedly under this part shall be treated as though made, filed or done pursuant to part two.

10. Notwithstanding the provisions of subdivisions one and two, for the years nineteen hundred seventy-three and those following, such city may impose, by local law, a surtax of fifteen per centum of the percentage of tax in effect for the year nineteen hundred seventy-two.

§ 13. Years for which imposed. The tax imposed by section twelve of this part is imposed for each calendar year beginning with the calendar year nineteen hundred sixty-six.

§ 14. Ascertainment of gain or loss. 1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section seventeen of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property, which exceeds

(b) The amount of gain that would be included in determining net income pursuant to subdivision one of this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first,

nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six; provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under subdivision nine of section twenty-one of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

§ 15. Exchange of property.--Upon the sale or exchange of property the entire amount of the gain or loss, determined under section fourteen, shall be recognized, except as hereinafter provided in this section:

1. No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation;

2. No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization;

3. No gain or loss shall be recognized if a taxpayer, a party to a reorganization, exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization; and

4. No gain or loss shall be recognized if property is transferred to a corporation by a taxpayer solely in exchange for stock or securities in such corporation, and immediately after the exchange such taxpayer is in control of the corporation; but in the case of an exchange by a taxpayer

and one or more other corporations or persons this subdivision shall apply only if the amount of the stock and securities received by each is substantially in proportion to its interest in the property prior to the exchange.

5. If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat of imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the director of finance, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

6. If there is distributed, in pursuance of a plan of reorganization, to a taxpayer shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such taxpayer shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

7. If an exchange would be within the provisions of subdivision one, two, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

8. If an exchange would be within the provisions of subdivision three of this section if it were not for the fact that the property received

in exchange consists not only of stock or securities permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then--

(a) If the taxpayer receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the taxpayer shall be recognized from the exchange, but

(b) If the taxpayer receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the taxpayer shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

9. If an exchange would be within the provisions of subdivision one, two, three, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

10. As used in this section:

The term "reorganization" means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (b) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or (d) a mere change in identity, form or place of organization, however effected;

The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation; and

The term "control" means the ownership of at least eighty per centum of the voting stock and at least eighty per centum of the total number of shares of all other classes of stock of the corporation.

11. No gain or loss shall be recognized upon the receipt by a taxpayer of property distributed in complete liquidation of a corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if--

(a) the taxpayer receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such corporation) possessing at least eighty per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least eighty per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and either

(b) the distribution is by such corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the base year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of the corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(c) such distribution is one of a series of distributions by such corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue

qualified under paragraph (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the year, the director of finance may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three year period, or if the taxpayer does not continue qualified under paragraph (a) until the completion of such transfer, the assessment and collection of all taxes then imposed under this subpart for such year or subsequent years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such corporation, merely because the carrying out of the plan involves (1) the transfer under the plan to the taxpayer by such corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in subdivision three of this section, and (2) the complete cancellation or redemption under the plan, as a result of exchanges described in subdivision two of this section, of the shares not owned by the taxpayers.

§ 16. Exchange of property when no gain or loss is realized. When property is exchanged for other property and no gain or loss is realized under the provisions of the preceding section, the property received shall be treated as taking the place of the property exchanged therefor. Where no gain or loss is realized under the provisions of subdivision eleven of the preceding section, the basis of the property received shall be the same as it would be in the hands of the transferror

determined in accordance with the provisions of section fourteen of this part.

§ 17. Inventory. Whenever in the opinion of the director of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the director of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business and most clearly reflecting the income.

§ 18. Net income defined. The term "net income" means the gross income of a taxpayer less the deductions allowed by this subpart.

§ 19. Computation of net income. The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the director of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

§ 20. Gross income defined. 1. The term "gross income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of a taxpayer is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the director of finance.

3. "Gross income" of a savings bank shall include the amount received by it in any taxable year as a distribution in liquidation of the mutual savings bank fund.

§ 21. Deductions. In computing net income there shall be allowed as deductions:

1. All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity.

2. All interest paid or accrued during the year on indebtedness.

3. Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government, or, fourth, under the franchise tax on banking corporations imposed by article thirty-two of the tax law, or, fifth, any tax imposed under this subpart.

4. Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the director of finance be accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed.

5. Debts ascertained to be worthless and charged off within the year; or in the discretion of the director of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the director of finance may allow such debt to be charged off in part.

6. A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due pursuant to article nine-b of the tax law. With respect to property such as described in subdivision twelve of this section, this deduction may be computed and allowed as provided therein.

7. If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the director of finance.

8. In the case of any taxpayer who establishes or maintains a pension

trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subdivision one of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (a) has not theretofore been allowable as a deduction, and (b) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made, or, under regulations of the director of finance, covers not more than one-tenth of the total pension liability with respect to services rendered prior to such taxable year; provided that said deduction shall be allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities, is exempt from federal income tax.

9. The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as hereinafter provided. In computing such deduction, (a) the amount of the bond premium shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to the date as of which this subdivision becomes applicable with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. The determination required in the preceding sentence shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the director of finance prescribing reasonable methods of amortizing bond premium. This subdivision shall apply only if the taxpayer shall so elect, in accordance with regulations of the director of finance, and such election shall be made separately with respect to (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of

which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two hereof, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless, upon the application by the taxpayer, the director of finance permits the taxpayer, subject to such conditions as the director of finance deems necessary, to revoke such election. As used in this subdivision the term "bond" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

10. In the case of a savings bank and savings and loan association, amounts paid or credited to depositors or holders of accounts as interest or dividends on their deposits or withdrawable accounts, if such amounts are withdrawable on demand subject only to customary notice of intention to withdraw.

11. A savings bank and savings and loan association may deduct in any taxable year the amount of the repayment of any loan or advance from the mutual savings bank fund in computing its net income and the amount of interest or dividends subject to the minimum tax under subdivision three of section twelve.

12. (a) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in

paragraph (b) of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(b) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-five, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after such date.

(c) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to subdivision six of this section with references to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(d) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

§ 22. Items not deductible. In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

SUBPART 2

TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 23. Imposition of tax. 1. Pursuant to the authority conferred by section fifty-two hundred nineteen of the United States revised statutes and in conformity with the provisions contained in subdivision c of clause one of such section, every national banking association organized under authority of the United States and located within the city, shall annually pay a tax, measured by its net income, to be computed, as provided in this subpart, at the rate of four and one-half per centum except that for the year nineteen hundred seventy-one and those following, as an alternative, at the rate of five and sixty-three one hundredths per centum, upon the basis of its net income for the calendar year next preceding the date when such tax becomes due. Such tax shall be for the calendar year next preceding the year in which it becomes due; except that with respect to national banking associations required to file a declaration of estimated tax and to make payments on account of such estimated tax in accordance with the provisions of section thirty-five of this part, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made. If, however, such a national banking association shall be dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with a corporation taxable under subpart one of this part, it shall pay a tax for the period from the thirty-first day of December up to the time of dissolution equal to that which would have been payable had it not been dissolved, except that such tax shall be reduced one-third and

an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was so dissolved. If such dissolution occurs between the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by sections thirty and thirty-two of this part, it may file a claim for refund as provided in section seventy-eight of this title, showing any reduction in tax to which it may be entitled as provided in the preceding sentence; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the director of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than the amount theretofore paid, the excess shall be refunded by the comptroller as provided in subdivision one of section seventy-seven of this title.

1-a. Notwithstanding the provisions of subdivision one, for the year nineteen hundred seventy-three and those following, such city may impose, by local law, a surtax of fifteen per centum of the percentage of tax in effect for the year nineteen hundred seventy-two.

2. In the event that the taxes imposed by this subpart shall be finally determined to be unconstitutional or invalid for the reason that they do not conform with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this subpart, every national banking association and every production credit association that otherwise would have been subject to tax under this subpart shall be subject to the tax imposed under part two as of the effective date of part two, and all of the provisions of part two, unless clearly inappropriate, shall be applicable except subdivision four of section three; and, in such event, any payments made, reports or returns filed or any act of the director of finance or of a taxpayer purportedly under this part shall be treated as though made, filed or done pursuant to part two.

§ 24. Years for which imposed. The tax imposed by section

twenty-three of this part is imposed for each calendar year beginning with the calendar year nineteen hundred sixty-six.

§ 25. Ascertainment of gain or loss; exchange of property. 1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section twenty-six of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property, which exceeds

(b) The amount of gain, if any, that would be included in determining net income pursuant to subdivision one of this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six; provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. Upon the sale or exchange of property the amount of the gain or loss shall be determined in the manner prescribed by section fifteen of

this part and the basis of such property shall be determined in the manner prescribed by section sixteen of this part.

4. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under paragraph (i) of subdivision one of section twenty-nine of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

§ 26. Inventory. Whenever in the opinion of the director of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the director of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business and most clearly reflecting the income.

§ 27. Net income defined; computation. The term "net income" means the gross income of a taxpayer less the deductions allowed by this subpart.

The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the director of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

§ 28. Gross income defined. 1. The term "gross income" includes gains, profit and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits, or income

received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of such an association is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the director of finance.

§ 29. Deductions. 1. In computing net income there shall be allowed as deductions:

(a) All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity;

(b) All interest paid or accrued during the year on indebtedness;

(c) Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government;

(d) Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the director of finance be accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where

it appears that within thirty days before or after the date of such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed;

(e) Debts ascertained to be worthless and charged off within the year; or in the discretion of the director of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the director of finance may allow such debt to be charged off in part;

(f) A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due pursuant to article nine-c of the tax law. With respect to property such as described in paragraph (j) of this subdivision, this deduction may be computed and allowed as provided therein;

(g) If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the director of finance;

(h) In the case of any taxpayer, who establishes or maintains a pension trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under paragraph (a) of this subdivision) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made; provided that said deduction shall be

allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities is exempt from federal income tax;

(i) The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as hereinafter provided. In computing such deduction, (a) the amount of the bond premium shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to the date as of which this paragraph becomes applicable with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. The determinations required in the preceding sentence shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the director of finance prescribing reasonable methods of amortizing bond premium. This paragraph shall apply only if the taxpayer shall so elect, in accordance with regulations of the director of finance, and such election shall be made separately with respect to (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two hereof, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the director of finance permits the taxpayer, subject to such conditions as the director of finance deems necessary, to revoke such election. As used in this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or

in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; and

(j) (1) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in subparagraph (2) of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-five, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after such date.

(3) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to paragraph (f) of this section with reference to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the

taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

2. In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

§ 30. Administration; procedure; provisions of law applicable. For the purpose of carrying into effect the provisions of this subpart, and except as otherwise provided in this subpart, income shall be computed, gain or loss ascertained, deductions made, apportionments and allocations determined, at the same time and subject to the same limitations and conditions, in so far as practicable, as is provided by subpart one of this part in relation to the tax imposed by such subpart.

§ 31. Tax on production credit associations. Pursuant to the authority conferred by the federal farm credit act of nineteen hundred thirty-three, every production credit association organized under the authority of the United States and located within the city after the stock held in it by the federal production credit corporation has been retired shall annually pay a tax measured by its net income, which shall be computed in the same manner as the tax imposed upon national banking associations by section twenty-three and shall be subject to the provisions of sections twenty-four to thirty inclusive.

SUBPART 3

ADMINISTRATION FOR SUBPARTS 1 AND 2

§ 32. Taxpayers' returns. Every taxpayer, on or before March fifteenth, nineteen hundred sixty-seven, and annually thereafter, shall make a return subscribed by the taxpayer and affirmed by him to be true under the penalties of perjury to the director of finance, for the calendar year next preceding, as to the business or that portion of the business of such taxpayer the income from which is the basis of taxation under this part, except that every trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall make its return for such period on or before September first, and every taxpayer, other than a trust company and savings bank, which shall commence to do business in the city or become located in the city, shall make its return for the calendar year in which it commences to do business or becomes located, on or before the twentieth day of January of the year succeeding such calendar year, and except that every taxpayer, other than a trust company and savings bank, which shall be dissolved, cease to do business in the city or cease to be located in the city, between the thirty-first day of December and the succeeding sixteenth day of March and shall not become merged or consolidated with another corporation taxable under the same subpart, shall make its return for such period on or before the date of such dissolution, or cessation of business, and every trust company and savings bank which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under the same subpart, shall make its return, for the period for which it is taxable under subdivision seven of section twelve of this part on or before the date of such dissolution. Such return shall be in such form and contain such information as the director of finance may require for the purpose of making any computation or otherwise performing its duty under this part. Such return shall state specifically the items of gross income derived from such business and the deductions allowed by this part, the net income which is the basis of the tax, and the amount of tax due. The return shall be subscribed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act. The fact that an individual's name is signed on the return shall be prima facie evidence

that such individual is authorized to subscribe and affirm the return on behalf of the corporation. Blank forms of return shall be furnished by the director of finance upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required. An automatic extension of three months for the filing of its annual return shall be allowed any taxpayer if, within the time prescribed herein for the filing thereof, such taxpayer files with the director of finance an application for extension in such form as the director of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax. The director of finance may grant a reasonable extension of time for filing a return, which may be in addition to any automatic extension allowed under the preceding sentence, whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. No such extension or extensions shall aggregate more than three months, exclusive of any automatic extension.

If the amount of taxable income for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, such taxpayer shall report such change or corrected taxable income or such execution of such notice of waiver and the changes or corrections of his federal taxable income on which it is based, within ninety days after such execution or the final determination of such change or correction, or on its next return under this part, or as required by the director of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended return with the director of finance which shall contain such information as it shall require.

§ 33. Consolidated returns. Corporations which are affiliated may, if

authorized, and shall, if required, by the director of finance, under regulations prescribed by the director of finance, make a consolidated return for the purpose of this part. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

§ 34. Payment of tax. Each taxpayer shall, at the time of filing its return, pay to the director of finance

(a) the amount of tax payable hereunder as the same shall appear from the face of the return, or

(b) if payments of estimated tax have been made pursuant to section thirty-five of this part, the balance, if any, of the tax payable hereunder, as the same shall appear from the face of the return, after applying thereto any payments made pursuant to said section.

If the time for filing the return shall be extended, the taxpayer shall pay in addition interest at the rate of six percentum per annum from the time when the return was originally required to be filed to the time of payment upon the amount by which the tax, or the portion thereof payable when the return was required to be filed, exceeds the amount then paid:

(1) a payment made on or before the date of filing of an application for an automatic extension shall be deemed properly estimated if it is either (A) not less than ninety percentum of the tax as finally determined, or (B) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a return is required to be filed shall be determined without regard to any extension of time for filing such return.

§ 35. Declaration of estimated tax; payments on account of estimated tax. 1. Every taxpayer subject to the tax imposed by this part shall make a declaration of the estimated tax upon the basis of its net income for the current calendar year, containing such information as the

director of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by this part upon the basis of its net income for the current calendar year, less the amount which it estimates to be the sum of any credits allowable against the tax.

3. A declaration of estimated tax shall be filed on or before June fifteenth of the calendar year upon the net income of which the tax is based, except that if the requirements of subdivision one are first met:

(a) after June first and before October second of such calendar year, the declaration shall be filed on or before October fifteenth, or

(b) after October first of such calendar year, the declaration shall be filed on or before January fifteenth of the succeeding calendar year.

Notwithstanding any other provision of this subdivision, no declaration need be filed prior to the sixtieth day after the date this title becomes effective.

4. A taxpayer may amend a declaration under regulations of the director of finance.

5. If, on or before February fifteenth of the succeeding year, a taxpayer files its return for the calendar year upon the net income of which the declaration is required to be based, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the return,

(a) such return shall be considered as its declaration if no declaration was required to be filed during such calendar year, but is otherwise required to be filed on or before January fifteenth of the succeeding year pursuant to subdivision three,

(b) such return shall be considered as an amendment permitted by subdivision four to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown on a declaration previously made.

6. The director of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as he may require.

7. Every taxpayer subject to the tax imposed by this part shall pay with the return of tax, if any, required to be filed upon the basis of its net income for the preceding calendar year, or with an application for extension of the time for filing such return, an amount equal to twenty-five per centum of the preceding year's tax, if such preceding year's tax exceeded one thousand dollars.

8. The estimated tax with respect to which a declaration for such calendar year is required pursuant to this section shall be paid as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same calendar year pursuant to subdivision seven, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following October fifteenth, and one on the following January fifteenth.

(b) If the declaration is filed after June fifteenth and not after October fifteenth of such calendar year, and is not required to be filed on or before June fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same calendar year pursuant to subdivision seven, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following January fifteenth.

(c) If the declaration is filed after October fifteenth of such calendar year, and is not required to be filed on or before October fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect of such calendar year pursuant to subdivision seven, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

9. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October fifteenth of the calendar year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

10. Any amount paid pursuant to subdivision seven shall be applied after payment as a first installment against the estimated tax of the taxpayer shown on the declaration next required to be filed pursuant to this section or, if no declaration of estimated tax is required to be filed by the taxpayer pursuant to this section, any such amount shall be considered a payment on account of the tax shown on the return of tax required to be filed by the taxpayer upon the basis of its net income for the calendar year during which such amount was paid.

11. Notwithstanding the provisions of section seventy-nine of this title or of section three-a of the general municipal law, if any amount paid pursuant to subdivision seven, exceeds the tax shown on the return required to be filed by the taxpayer upon the basis of its net income for the calendar year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the rate of six per centum per annum from the date of payment of the amount so paid pursuant to such subdivision to March fifteenth of the succeeding calendar year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

12. As used in this section, "the preceding year's tax" means the tax

imposed upon the taxpayer by this part upon the basis of its net income for the preceding calendar year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of time for filing the return required to be filed for such preceding calendar year, the amount properly estimated pursuant to section thirty-four of this part as the tax imposed upon the basis of its net income for such calendar year.

13. This section shall apply to an income period of less than twelve months in accordance with regulations of the director of finance.

14. The director of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as he may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however that interest at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

15. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

§ 36. Real property taxable. Nothing in this part shall be construed to exempt the real property of any taxpayer from taxation to the same extent, according to its value, as other real property is taxed.

PART V

TRANSPORTATION CORPORATION TAX

§ 61. Tax on transportation corporations and associations. 1. The term "corporation" as used in this part shall include any business

conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments.

2. For the privilege of doing business or of holding property in the city every corporation, joint stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry (except a ferry company operating between any of the boroughs of the city under a lease granted by the city), or navigation business, or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint stock company or association subject to taxation under a local law of the city imposed on utilities and vendors of utility services, shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock within the city during the preceding year, and upon each dollar of such amount.

3. The measure of the amount of capital stock in the city, except as hereinafter provided, shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business. Provided, however, that in the case of a corporation taxable hereunder only for the privilege of holding property, the measure shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, located within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever located. The capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the assets of the issuing corporation, other than patents, copyrights, trademarks, contracts and good will, are located.

4. Every corporation, joint stock company or association subject to taxation under this section shall, in any event, pay annually a minimum tax of not less than ten dollars nor less than one mill on each dollar of such a portion of the net value of its issued capital stock, which net value for the purposes of this section shall be deemed to be not

less than five dollars per share, as may be determined upon such of the bases herein provided for the measurement thereof as is applicable. The term "net value" as used in this section shall be construed to mean not less than the difference between a corporation's assets and liabilities, and not less than the average price at which such stock sold during the year covered by the report which forms the basis for the tax. But if the dividends paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amount to six or more than six per centum, the tax upon such kind of capital stock shall be at the rate of one-quarter of a mill for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, unless such a tax be less than the minimum tax hereinbefore provided in this section and the director of finance shall, for such purpose, make a fair and equitable apportionment of the assets of the corporation, joint stock company or association, between or among the different kinds of stock.

5. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the part value thereof, has been paid, and upon the other no dividend has been paid, or the dividend or dividends paid thereon amount to less than six per centum upon the par value thereof, then the tax shall be fixed upon each kind as hereinbefore provided.

6. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount paid as a dividend or dividends during the year by the amount paid in on such stock and, if the rate is six per centum or more, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, unless such tax be less than the minimum tax hereinbefore in this section provided for. Any consideration given by a corporation for the purchase of its own stock in excess of the consideration received by it for the issuance of such stock shall for the purposes of this section, be considered as a dividend.

7. The owning or holding in the city by any corporation of property,

other than property exclusively in interstate or foreign commerce, shall constitute carrying on business within the city within the intent of this section, except that a corporation having no property in the city other than a bank balance or stocks or bonds, or one of more of such kinds of property, either held for safe keeping or pledged as collateral security shall not be taxable under this section, and further provided that any corporation having only office furniture or fixtures, a bank balance, and stocks or bonds pledged as collateral security or merely deposited for safe keeping, shall not be taxable under this section.

8. The measure of the amount of capital stock in the city of an aviation corporation shall be a portion of the issued capital stock determined by applying thereto the arithmetical average of the following three ratios: (a) the ratio which the aircraft arrivals and departures within the city scheduled by any such corporation during the preceding calendar year bear to the total aircraft arrivals and departures within and without the city scheduled by it during the same period, provided that in the case of non-scheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (b) the ratio which the revenue tons handled by such corporation at airports within the city during the preceding calendar year bear the total revenue tons handled by it at airports within and without the city during the same period; and (c) the ratio which such corporation's originating revenue within the city for the preceding calendar year bears to its total originating revenue within and without the city for the same period. As used in this section, the term "aircraft arrivals and departures" means the number of scheduled landings and takeoffs of the aircraft of an aviation corporation, and the number of scheduled air pickups and deliveries by the aircraft of such corporation, and in the case of non-scheduled operations shall include all landings and takeoffs, pickups and deliveries; the term "originating revenue" means revenue to any such corporation from the transportation of revenue passengers and revenue property first received by such corporation either as originating or connecting traffic at airports; and the term "revenue tons handled" by any such corporation at an airport means the weight in tons of revenue passengers (at two hundred pounds per passenger) and revenue cargo first received either as originating or

connecting traffic or finally discharged by such corporation at such airport.

9. The measure of the capital stock in the city of a corporation engaged in the operation of vessels in foreign commerce shall be such portion of the issued capital stock as the aggregate number of working days in territorial waters of the city of all such vessels bears to the aggregate number of working days of all such vessels. The dividend rate for such a corporation shall be determined by dividing the amount paid as a dividend or dividends on all classes of stock during the year by the amount of paid-in capital and, if the rate is six per centum or more, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital.

§ 62. Additional tax on transportation corporations and associations.

Every corporation, joint-stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry (except a ferry company operating between any of the boroughs of the city under a lease granted by the city), or navigation business or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint-stock company or association subject to taxation under a local law of the city, imposed on utilities and vendors of utility services, shall pay for the privilege of carrying on its business in the city, a tax which shall be equal to five-tenths of one per centum upon its gross earnings from all sources within the city, excluding earnings derived from business of a character other than wholly intra-city. Provided, however, gross earnings from transportation business both originating and terminating within the city and traversing both the city and any other city, any state or states or any country shall be subject to the tax imposed by this section and such earnings shall be allocated to the city in the same ratio that the mileage within the city bears to the total mileage of such business.

§ 63. Receivers, etc., conducting corporate business. Any receiver, liquidator, referee, trustee, assignee, or other fiduciary or officer or

agent appointed by any court, who conducts the business of any corporation, joint stock company or association shall be subject to the tax or taxes imposed by this part in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation, joint stock company or association. A dissolved corporation, joint stock company or association which continues to conduct business shall also be subject to the tax imposed by this part.

§ 64. Service of process; limitation of time. 1. Every foreign corporation (other than a moneyed corporation) subject to the provisions of this part, except a corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this part may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon him. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon him to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section two hundred twelve of the general

corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this part may be made by either (1) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

2. The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this part or part six of this title, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to

avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 65. Exemption of Corporations Owned by a Municipality. The provisions of this part shall not apply to any corporation all of the capital stock of which is owned by a municipal corporation of this state.

§ 66. Reports of Corporations. Corporations liable to pay a tax under this part shall report as follows:

1. Every corporation, association or joint stock company liable to pay a tax under section sixty-one of this part shall, on or before March first in each year, make a written report to the director of finance of its condition at the close of its business on the preceding December thirty-first, stating the amount of its authorized capital stock, the amount of stock paid-in, the date and rate per centum of each dividend paid by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in the city during such year.

2. Every corporation, joint stock company or association liable to pay an additional tax under section sixty-two of this part shall also, on or before February fifteenth, May fifteenth, August fifteenth and November fifteenth in each year, make a written report to the director of finance of the amount of its gross earnings subject to the tax imposed by said section for the quarter year ended on the last day of the second month preceding that in which the report is required to be filed. Any such corporation, joint stock company or association which ceases to be subject to the tax imposed by section sixty-two of this part by reason of a liquidation, dissolution, merger or consolidation with any other corporation, or any other cause, shall, on the date of such cessation or at such other time as the director of finance may require, make a

written report to the director of finance of the amount of its gross earnings subject to the tax imposed by section sixty-two of this part for any period for which no report was theretofore filed.

3. The director of finance may for good cause shown extend the time within which any corporation is required to report by this part.

4. Every report required by this part shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, or chief accounting officer or any other officer of the corporation, association or joint stock company duly authorized so to act, or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation. Such reports shall contain any other data, information or matter which the director of finance may require to be included therein, and it may prescribe the form in which such reports shall be made. When so prescribed such forms shall be used in making the report. The director of finance may require at any time a further or supplemental report under this part, which shall contain information and data upon such matters as the director of finance may specify. Reports shall be preserved for five years, and thereafter until the director of finance orders them to be destroyed.

§ 67. Payment of tax and penalties. 1. The taxes imposed by sections sixty-one and sixty-two of this part shall be due and payable at the time of filing the report required by section sixty-six, or, in case such a report is not filed when due, on the last day specified for the filing thereof, except that the tax upon dividends imposed by section sixty-two of this part shall be due and payable at the time of filing the report for the period ending June thirtieth, or, in case such report is not filed when due, on the last day specified for the filing thereof.

2. Where an application for consent to dissolution, as provided by

section one hundred five of the stock corporation law or section one thousand four of the business corporation law, is filed with the director of finance prior to the commencement of any tax year or period, by a corporation subject to tax under this part, such corporation shall not be liable for any tax imposed by this part for such following year or period (except as may be otherwise provided in section sixty-three), provided that the certificate of dissolution for such corporation is duly filed in the office of the secretary of state within twenty days after the filing of such application.

3. Notwithstanding any other provision of this part, the director of finance may grant a reasonable extension of time for payment of any tax imposed by this part under such conditions as he deems just and proper.

§ 68. Taxable years to which taxes apply. The taxes imposed by this part are imposed for each taxable year or period beginning with taxable years or periods ending in or with the calendar year nineteen hundred sixty-six.

§ 69. First reports for payments for nineteen hundred sixty-six. If any report under this part is due prior to sixty days after the enactment of this title, such report and the payment therewith shall be filed and paid within sixty days after the enactment of this title.

PART VI (CORPORATE TAX PROCEDURE AND ADMINISTRATION)

§ 71. Application of part. 1. General.--The provisions of this part shall apply to the administration of and the procedures with respect to the taxes imposed by part two, part three, part four and part five of this title.

2. Definitions.--As used in this part: (a) the term "named parts"

means parts two, three, four and five of this title;

(b) The term "return" means a report or return of tax, but does not include a declaration of estimated tax;

(c) The term "corporation" includes a corporation, association, joint stock company or other entity subject to tax under any of the named parts; and

(d) The term "person" includes a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual liable for the tax imposed by any of the named parts or under a duty to perform an act under any of the named parts. Upon notice to the director of finance that any person is acting for any corporation in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties and privileges of such corporation in respect of a tax imposed by any of the named parts (except as otherwise specifically provided and except that the tax shall be collected from the estate or other assets of such corporation in the hands of such fiduciary), until notice is given that the fiduciary capacity has terminated.

§ 72. Notice of Deficiency. 1. General.--If upon examination of a taxpayer's return, the director of finance determines that there is a deficiency of tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a tax return, the director of finance is authorized to estimate the taxpayer's city tax liability from any information in his possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at its last known address in or out of the city. If the taxpayer has terminated its existence, a notice of deficiency may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this part. If the director of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

2. Notice of deficiency as assessment.--After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest,

additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the director of finance a petition under section eighty. If the notice of deficiency is addressed to a taxpayer whose last known address is outside of the United States, such period shall be one hundred fifty days instead of ninety days.

3. Restrictions on assessment and levy.--No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section eighty-five, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the director of finance, until the decision of the director of finance has become final. For exception in the case of judicial review of the decision of the director of finance, see subdivision three of section eighty-one.

4. Exceptions for mathematical errors.--If a mathematical error appears on a return (including an overstatement of the amount paid as estimated tax), the director of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section seventy-eight (limiting credits or refunds after petition to the director of finance), or subdivision two of section eighty (authorizing the filing of a petition with the director of finance based on a notice of deficiency), nor shall such assessment or collection be prohibited by the provisions of subdivision three of this section.

5. Exception where change in federal taxable income is not reported.--

(a) If the taxpayer fails to comply with part two or part three of this title in not reporting a change or correction or renegotiation, or computation or recomputation of tax, increasing or decreasing its federal taxable income as reported on its federal income tax return or in not reporting a change or correction or renegotiation, or computation or a recomputaton of tax, which is treated in the same manner as if it

were a deficiency for federal income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver executed pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such increased or decreased federal taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change or correction or renegotiation, or computation or recomputation of tax, or an amended return, where such return was required by part two or part three, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section seventy-eight (limiting credits or refunds after petition to the director of finance), or subdivision two of section eighty (authorizing the filing of a petition with the director of finance based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this part. If the director of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

6. Waiver of restrictions.--The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the director of finance.

7. Two or more corporations.--In the case of a combined return under

part two or a consolidated return under part three of two or more corporations, the director of finance may determine a deficiency of tax under part two or part three with respect to the entire tax due upon such return against any taxpayer included therein. In the case of a taxpayer which might have been included in such a return under part two or part three when the tax was originally reported, the director of finance may determine a deficiency of tax under part two or part three against such taxpayer and against any other taxpayers which might have been included in such a return.

8. Deficiency defined.--For purposes of this part, a deficiency means the amount of the tax imposed by the named parts, or any of them, less (a) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by it or by the director of finance), and less (b) the amounts previously assessed (or collected without assessment) as a deficiency and plus (c) the amount of any rebates. For the purpose of this definition, the tax imposed by part two or part three of this title and the tax shown on the return shall both be determined without regard to any payment of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) as was made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

9. Exception where change or correction of sales and compensating use tax liability is not reported.

(a) If a taxpayer fails to comply with part two of this title in not reporting a change or correction of its sales and compensating use tax liability or in not filing a copy of an amended return or report relating to its sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under part two of this title by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed

assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by part two, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section seventy-eight (limiting credits or refunds after petition to the commissioner of finance), or subdivision two of section eighty (authorizing the filing of a petition with the commissioner of finance based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, notice of additional tax due may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this part. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

§ 73. Assessment. 1. Assessment date.--The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision two of section seventy-two if no petition to the director of finance is filed, or if a petition is filed, then upon the date when a decision of the director of finance establishing the amount of the deficiency becomes final. If a report or an amended return filed pursuant to part two or part three of this title concedes the accuracy of a federal adjustment or change or correction or renegotiation, or computation or recomputation of tax, any deficiency in tax under part two or part three of this title resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section

seventy-four. If a report filed pursuant to part two of this title concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under part two of this title resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section seventy-four. If a notice of additional tax due, as prescribed in subdivision five of section seventy-two, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal adjustment or change or correction or renegotiation or computation or recomputation of tax, or an amended return, where such return was required by part two or part three of this title, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous. If a notice of additional tax due, as prescribed in subdivision nine of section seventy-two, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by part two of this title, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provisions.

2. Other assessment powers.--If the mode or time for the assessment of any tax under the named parts (including interest, additions to tax and assessable penalties) is not otherwise provided for, the director of finance may establish the same by regulations.

3. Estimated tax.--No unpaid amount of estimated tax under part two or part three shall be assessed.

4. Supplemental assessment.--The director of finance may, at any time within the period described for assessment, make a supplemental assessment, subject to the provisions of section seventy-two where

applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

5. Cross reference.--For assessment in case of jeopardy, see section eighty-five.

§ 74. Limitations on Assessment. 1. General.--Except as otherwise provided in this section, any tax under the named parts shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

2. Time return deemed filed.--For purposes of this section, a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof shall be deemed to be filed on such last day.

3. Exceptions.--

(a) Assessment at any time.--The tax may be assessed at any time if--

(1) no return is filed,

(2) a false or fraudulent return is filed with intent to evade tax,

(3) in the case of the tax imposed under part two or part three of this title, the taxpayer fails to file a report or amended return required thereunder, in respect of an increase or decrease in federal taxable income or federal tax, or in respect of a change or correction or renegotiation or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes; or

(4) in the case of the tax imposed under part two of this title, the taxpayer fails to file a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by part two was claimed.

(b) Extension by agreement.--Where, before the expiration of the time prescribed in this section for the assessment of tax, both the director

of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Report of changed or corrected federal income. In the case of the tax imposed under part two or part three of this title, if the taxpayer files a report or amended return required thereunder, in respect of an increase or decrease in federal taxable income or federal tax, or in respect of a change or correction or renegotiation, or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal change or correction or renegotiation, or computation or recomputation of tax. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Deficiency attributable to net operating loss carryback.--If a deficiency of tax under part two of this title is attributable to the application to taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(e) Recovery of erroneous refund.--An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(f) Request for prompt assessment.--The tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the taxpayer or by a fiduciary representing the taxpayer, but not more than three years after the return was filed, except as

otherwise provided in this subdivision and subdivision four. This subdivision shall not apply unless--

(1) (A) such written request notifies the director of finance that the taxpayer contemplates dissolution at or before the expiration of such eighteen-month period, (B) the dissolution is in good faith begun before the expiration of such eighteen-month period, and (C) the dissolution is completed;

(2) (A) such written request notifies the director of finance that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(g) Change of the allocation of taxpayer's income or capital.--No change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based shall be made where an assessment of tax is made during the additional period of limitation under subparagraph (3) or (4) of paragraph (a), or under paragraph (c), (d) or (i); and where any such assessment has been made, or where a notice of deficiency has been mailed to the taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such assessment or on the taxpayer's petition for redetermination of such deficiency.

(h) Report concerning waste treatment facility. Under the circumstances described in subparagraph (3) of paragraph (g) of subdivision eight of section two of this title, the tax may be assessed within three years after the filing of the report containing the information required by such paragraph.

(i) Report of changed or corrected sales and compensating use tax liability. In the case of a tax imposed under part two of this title, if the taxpayer files a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, the assessment (if not deemed to have been made upon the filing of the report) may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction.

The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

4. Omission of income on return.--The tax may be assessed at any time within six years after the return was filed if a taxpayer omits from gross income required to be reported on a return under any of the named parts an amount properly includable therein which is in excess of twenty-five percentum of the amount of gross income stated in the return.

For purposes of this subdivision--

(a) the term "gross income" means gross income for federal income tax purposes as reportable on a return under part two of this title and "gross earnings," "gross income," "gross operating income" and "gross direct premiums less return premiums," as those terms are used in whichever of the named parts is applicable;

(b) there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the director of finance of the nature and amount of such item.

5. Suspension of running of period of limitations. The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the director of finance is prohibited under subdivision three of section seventy-two from making the assessment or from collecting by levy.

§ 75. Interest on underpayment. 1. General.--If any amount of tax is not paid on or before the last date prescribed in whichever of the named parts is applicable for payment, interest on such amount at the rate set by the commissioner of finance pursuant to section eighty-seven, or, if no rate is set, at the rate of six percentum per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one

dollar.

2. Exception as to estimated tax.--This section shall not apply to any failure to pay estimated tax under part two or part three of this title.

3. Exception for mathematical error.--No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in whichever of the named parts is applicable (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

5. Suspension of interest on deficiencies.--If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the director of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

6. Tax reduced by carryback.--If the amount of tax under part two for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

7. Interest treated as tax.--Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes under the named parts. Any reference in this part to the tax imposed by the named parts, or any of them, shall be deemed also to refer to interest imposed by this section on such tax.

8. Interest on penalties or additions to tax.--Interest shall be imposed under subdivision one in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor

under subdivision two of section eighty-three and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

9. Payment prior to notice of deficiency.--If, prior to the mailing to the taxpayer of a notice of deficiency under subdivision two of section seventy-two, the director of finance mails to the taxpayer a notice of proposed increase of tax and within thirty days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the director of finance, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

10. Payment within ninety days after notice of deficiency.--If a notice of deficiency under section seventy-two is mailed to the taxpayer, and the total amount specified in such notice is paid on or before the ninetieth day after the date of mailing, interest under this section shall not be imposed for the period after the date of the notice.

11. Payment within ten days after notice and demand.--If notice and demand is made for payment of any amount under subdivision two of section eighty-three, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

12. Limitation on assessment and collection.--Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

13. Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the rate set by the commissioner of finance pursuant to section eighty-seven, or, if no rate is set, at the rate of six percentum per annum from the date of the

payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

14. Satisfaction by credits.--If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 76. Additions to tax and civil penalties. 1. Failure to file return.--In case of failure to file a return under the named parts on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percentum of the amount of such tax if the failure is for not more than one month, with an additional five percentum for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percentum in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

2. Deficiency due to negligence.--If any part of a deficiency is due to negligence or intentional disregard of this part or any of the named parts or rules or regulations thereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percentum of the deficiency.

3. Failure to file declaration or underpayment of estimated tax.--If any taxpayer fails to file a declaration of estimated tax under part two or part three, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate set by the

commissioner of finance pursuant to section eighty-seven, or, if no rate set, at the rate of six percentum per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the third month following the close of the taxable year. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of the preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percentum of the tax shown on the return for the taxable year (or if no return was filed, ninety per centum of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty per centum" were substituted for "ninety per centum" each place it appears in this subdivision, the addition to the tax shall be equal to seventy-five per centum of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the termination of existence of the taxpayer.

4. Exception to addition for underpayment of estimated tax.--The addition to tax under subdivision three with respect to any underpayment of any amount which is applied as an installment against estimated tax under part two or part three of this title shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of any such amount equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

(a) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(b) An amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding

taxable year, or

(c) (i) An amount equal to ninety percentum of the tax for the taxable year computed by placing on an annualized basis the taxable income--

(1) for the first three months or the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

(2) for the first six months, the first eight months or the first nine months of the taxable year, in the case of the installment required to be paid in the tenth month, and

(3) for the first nine months, the first eleven months or the full twelve months of the taxable year, in the case of the installment required to be paid in the first month of the next succeeding year.

(ii) For purposes of subparagraph (i), the taxable income shall be placed on an annualized basis by--

(1) multiplying it by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year), and

(2) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, eleven or twelve, as the case may be) referred to in subparagraph (i), or

(d) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner--

(A) take the taxable income for all months during the taxable year preceding the filing month,

(B) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(C) determine the tax on the amount determined under clause (B), and

(D) multiply the tax determined under clause (C) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of subparagraph (i)--

(A) the base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other

similar circumstances, and

(B) the term "filing month" means the month in which the installment is required to be paid.

5. Allocation of net income.--(a) Except as provided in paragraph (b) hereof, paragraphs (a) and (b) of subdivision four of this section shall not apply in the case of any corporation (or any predecessor corporation) which had entire net income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(b) The amount treated as the estimated tax under paragraphs (a) and (b) of subdivision four of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

6. Deficiency due to fraud.--If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percentum of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subdivision one or two.

7. Additional penalty.--Any person who with fraudulent intent shall fail to pay under the named parts any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under any of the named parts, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this part to be imposed, assessed and collected by the director of finance. The director of finance shall have the power, in his discretion, to waive, reduce or compromise any penalty under this subdivision.

8. Additions treated as tax.--The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this part to tax imposed by any of the named parts shall be deemed also to refer to the additions to tax and penalties provided by

this section. For purposes of section seventy-two, this subdivision shall not apply to--

- (a) any addition to tax under subdivision one except as to that portion attributable to a deficiency;
- (b) any addition to tax under subdivision three; and
- (c) any additional penalty under subdivision seven.

9. Determination of deficiency.--For purposes of subdivisions two and six the amount shown as the tax by the taxpayer upon its return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

10. Person defined.--For purposes of subdivision seven, the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

11. Substantial understatement of liability.--If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or ten thousand dollars except that for an electing small business corporation as defined in section thirteen hundred sixty-one of the internal revenue code a substantial understatement exists if the amount of the understatement exceeds ten percent of the tax or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return. The amount of the understatement under the preceding sentence shall be

reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

§ 77. Overpayment. 1. General.--The director of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by any of the named parts of this title or on the taxpayer who made the overpayment, and the balance shall be refunded out of the proceeds of the tax.

2. Credits against estimated tax.--The director of finance may prescribe regulations providing for the crediting against the estimated tax under part two or part three of this title for any taxable year of the amount determined to be an overpayment of tax under any such part for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax under part two or part three of this title for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

3. Rule where no tax liability.--If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

4. Assessment and collection after limitation period.--If any amount of tax is assessed or collected after the expiration of the period of

limitations properly applicable thereto, such amount shall be considered an overpayment.

5. Assignment of overpayment.--A credit for an overpayment of tax under any of the named parts may be assigned by the taxpayer to a corporation liable to pay taxes under any of the named parts, and the assignee of the whole or any part of such credit, on filing such assignment with the director of finance, shall thereupon be entitled to credit upon the books of the director of finance for the amount thereof on its current account for taxes, in the same manner and to the same effect as though the credit had originally been allowed in its favor.

6. Notwithstanding any other provision of law to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of such department, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this title.

§ 78. Limitations on credit or refund. 1. General.--Claim for credit or refund of an overpayment of tax under any of the named parts shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result of (a) a net operating loss

carryback, or (b) an increase or decrease in federal taxable income or federal tax, or (c) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (g) of subdivision three of section seventy-four.

2. Extension of time by agreement.--If an agreement under the provisions of paragraph (b) of subdivision three of section seventy-four (extending the period for assessment of tax) is made within the period prescribed in subdivision one for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision one if a claim had been filed on the date the agreement was executed.

3. Notice of change or correction of federal income.--If a taxpayer is required by part two or part three of this title to file a report or amended return in respect of (a) a decrease or increase in federal taxable income or federal tax, or (b) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were an overpayment for federal income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. If the report or amended return required by part two or part three of this title is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund--

(c) shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based, and

(d) shall not exceed the amount of the reduction in tax attributable to such decrease or increase in federal taxable income or federal tax or to such federal change or correction or renegotiation, or computation or recomputation of tax.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

4. Overpayment attributable to net operating loss carryback.--A claim for credit or refund of so much of an overpayment under part two of this title as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision two in respect of such taxable year, or within the period prescribed in subdivision three, where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest. Where such claim for credit or refund is filed after the expiration of the period prescribed in subdivision one or in subdivision two where applicable, in respect of the taxable year to which the net operating loss is carried back, the amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based.

5. Failure to file claim within prescribed period.--No credit or refund shall be allowed or made, except as provided in subdivision six of this section or subdivision four of section eighty-one, after the expiration of the applicable period of limitation specified in this part, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under the named parts.

6. Effect of petition to director of finance.--If a notice of deficiency for a taxable year has been mailed to the taxpayer under

section seventy-two and if the taxpayer files a timely petition with the director of finance under section eighty, he may determine that the taxpayer has made an overpayment for such year (whether or not he also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

(a) as to overpayment determined by a decision of the director of finance which has become final; and

(b) as to any amount collected in excess of an amount computed in accordance with the decision of the director of finance which has become final; and

(c) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(d) as to any amount claimed as a result of a change or correction described in subdivision three.

7. Limit on amount of credit or refund.--The amount of overpayment determined under subdivision six shall, when the decision of the director of finance has become final, be credited or refunded in accordance with subdivision one of section seventy-seven and shall not exceed the amount of tax which the director of finance determines as part of his decision was paid--

(a) after the mailing of the notice of deficiency, or

(b) within the period which would be applicable under subdivisions one, two or three, if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the commissioner of finance finds that there is an overpayment.

For special restriction on credit or refund in a proceeding on a petition for redetermination of a deficiency where the notice of deficiency is issued as a result of (i) a net operating loss carryback, or (ii) an increase or decrease in federal taxable income or federal tax, or (iii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (g) of subdivision three of section seventy-four.

8. Early return.--For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

9. Prepaid tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment (including any amount paid by the taxpayer as estimated tax for a taxable year) shall be deemed to have been paid by it on the fifteenth day of the third month following the close of the taxable year the income of which is the basis for tax under part two or part three of this title, or on the last day prescribed in subpart one of part four or in part five for the filing of a final return for such taxable year, or portion thereof, determined in all cases without regard to any extension of time granted the taxpayer.

10. Cross reference.--For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision two of section seventy-seven.

11. Notice of change or correction of sales and compensating use tax liability.--If a taxpayer is required by part two of this title to file a report or amended return in respect of a change or correction of its sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. If the report or amended return required by part two of that title is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

§ 79. Interest on overpayment. 1. General.--Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the rate set by the commissioner of finance pursuant to section eighty-seven, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by any of the named parts:

(a) from the date of the overpayment to the due date of an amount against which a credit is taken;

(b) from the date of the overpayment to a date (to be determined by the commissioner of finance) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) late returns. Notwithstanding paragraph (a) or (b) of this subdivision, in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

No interest shall be allowed or paid if the amount thereof is less than one dollar.

2. Advance payment of tax and estimated tax.--The provisions of subdivisions eight and nine of section seventy-eight applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

3. Tax refund within three months of due date of tax.--If any overpayment of tax imposed by any of the named parts is refunded within three months after the last date prescribed (or permitted by extension

of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on such overpayment.

4. Refund of tax caused by carryback.--For purposes of this section, if any overpayment of tax imposed by part two of this title results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision three of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

5. No interest until return in processible form.--

(a) For purposes of subdivisions one and three of this section, a return shall not be treated as filed until it is filed in processible form.

(b) For purposes of paragraph (a) of this subdivision, a return is in a processible form if--

(A) such return is filed on a permitted form, and

(B) such return contains--

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

6. Cross reference.--For provision terminating interest after failure to file a report or amended return under part two or part three, see subdivision three of section seventy-eight.

§ 80. Petition to director of finance. 1. General. The form of a

petition to the director of finance, and further proceedings before the director of finance in any case initiated by the filing of a petition, shall be governed by such rules as the director of finance shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by the director of finance, or by a hearing officer designated by the director of finance to take evidence and report to the director of finance. The director of finance shall decide the case as quickly as practicable. Notice of decision shall be mailed promptly to the taxpayer by certified or registered mail at its last known address, and such notice shall set forth the director's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

2. Petition for redetermination of a deficiency.--Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section seventy-two, the taxpayer may file a petition with the commissioner of finance for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision seven of section seventy-eight. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of (a) a net operating loss carryback, (b) an increase or decrease in federal taxable income or federal tax, or (c) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (g) of subdivision three of section seventy-four.

3. Petition for refund.--A taxpayer may file a petition with the director of finance for the amounts asserted in a claim for refund if--

(a) the taxpayer has filed a timely claim for refund with the director of finance,

(b) the taxpayer has not previously filed with the director of finance a timely petition under subdivision two for the same taxable year unless the petition under this subdivision relates to a separate claim for

credit or refund properly filed under subdivision six of section seventy-eight, and

(c) either (1) six months have expired since the claim was filed, or (2) the director of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

No petition under this subsection shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the director of finance. If a taxpayer files a written waiver of the requirement that he be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

4. Assertion of deficiency after filing petition.--

(a) Petition for redetermination of deficiency.--If a taxpayer files with the director of finance a petition for redetermination of a deficiency, the director of finance shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section seventy-six, if claim therefor is asserted at or before the hearing under rules of the director of finance.

(b) Petition for refund.--If the taxpayer files with the director of finance a petition for credit or refund for a taxable year, the director of finance may

(1) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the director of finance and within the period in which an assessment would be timely under section seventy-four, or

(2) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the director of finance.

(c) Opportunity to respond.--A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the director of

finance under this subdivision.

(d) Restriction on further notices of deficiency.--If the taxpayer files a petition with the commissioner of finance under this section, no notice of deficiency under section seventy-two may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to an increase or decrease in federal taxable income or federal tax or a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, required to be reported under part two or part three of this title or with respect to a state change or correction of sales and compensating use tax liability required to be reported under part two of this title.

5. Burden of proof.--In any case before the director of finance under this part, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the director of finance:

(a) whether the petitioner has been guilty of fraud with intent to evade tax;

(b) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and

(c) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of an increase or decrease in federal taxable income or federal tax or a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, required to be reported under part two or part three of this title, and of which increase, decrease, change or correction or renegotiation, or computation or recomputation, the commissioner of finance had no notice at the time he mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under part two of this title, and of which change or correction

the commissionr of finance had no notice at the time he mailed the notice of deficiency.

6. Evidence of related federal or state determination.--Evidence of a federal or state determination relating to issues raised in a case before the director of finance under this section shall be admissible, under rules established by the director of finance.

7. Jurisdiction over other years.--The director of finance shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 81. Review of director's decision. 1. General.--A decision of the director of finance shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

2. Judicial review exclusive remedy of taxpayer.--The review of a decision of the director of finance provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by the named parts.

3. Assessment pending review; review bond.--Irrespective of any restrictions on the assessment and collection of deficiencies, the director of finance may assess a deficiency after the expiration of the period specified in subdivision one, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer unless the taxpayer, at or before the time the taxpayer's application for review is made, has paid the deficiency, has deposited with the director of finance the amount of the deficiency, or has filed

with the director of finance a bond (which may be a jeopardy bond under subdivision eight of section eighty-five) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the director of finance is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

4. Credit, refund or abatement after review.--If the amount of a deficiency determined by the director of finance is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

5. Date of finality of director of finance decision.--A decision of the director of finance shall become final upon the expiration of the period specified in subdivision one for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the director of finance of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the director of finance shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

§ 82. Mailing rules; holidays. 1. Timely mailing.--If any claim, statement, notice, petition, or other document (including to the extent authorized by the director of finance, a return or a declaration of estimated tax) required to be filed within a prescribed period or on or

before a prescribed date under authority of any provision of this part or of the named parts is, after such period or such date, delivered by United States mail to the director of finance, bureau, office, officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the director of finance, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the director of finance, bureau, office, officer or person to which or to whom addressed. To the extent that the director of finance shall prescribe by regulation, certified mail may be used in lieu of registered mail under this subdivision. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the director of finance.

2. Last known address.--For purposes of this part, a taxpayer's last known address shall be the address given in the last return filed by it, unless subsequently to the filing of such return the taxpayer shall have notified the director of finance of a change of address.

3. Last day a Saturday, Sunday or legal holiday.--When the last day prescribed under authority of this part or the named parts (including any extension of time) for performing any act falls on a Saturday, Sunday, or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

§ 83. Collection, levy and liens.--1. Collection procedures.--The taxes imposed by the named parts shall be collected by the director of finance, and he may establish the mode or time for the collection of any

amount due him thereunder if not otherwise specified. The director of finance shall, upon request, give a receipt for any sum collected thereunder. The director of finance may authorize banks or trust companies which are depositaries or financial agents of the city to receive and give a receipt for any tax imposed under the named parts in such manner, at such times, and under such conditions as the director of finance may prescribe; and the director of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the director of finance.

2. Notice and demand for tax.--The director of finance shall as soon as practicable give notice to each taxpayer liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the principal office of the taxpayer in the city or shall be sent by mail to such taxpayer's last known address. Except where the director of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

3. Issuance of warrant after notice and demand.--If any corporation or other person liable under the named parts for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such corporation or other person under subdivision two, the director of finance may within six years after the date of such assessment issue a warrant under his official seal directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding him to levy upon and sell the real and personal property of such corporation or other person for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the director of finance and pay to him the money collected by virtue thereof within sixty days after the receipt of the warrant. If the director of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may

be made by the director of finance and upon failure or refusal to pay such tax or other amount the director of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

4. Copy of warrant to be filed and lien to be created.--Any sheriff or officer or employee who receives a warrant under subdivision three shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

5. Judgment.--When a warrant has been filed with the county clerk the director of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

6. Execution.--The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

7. Foreign corporations.--Where a notice and demand under subdivision two shall have been given to a foreign corporation or other person who is not then a resident, and it appears to the director of finance that it is not practicable to find in the state property of such foreign corporation or nonresident person sufficient to pay the entire balance of tax or other amount owing by such foreign corporation or nonresident person, the director of finance may, in accordance with subdivision three, issue a warrant directed to an officer or employee of the

department of finance, a copy of which warrant shall be mailed by certified or registered mail to such foreign corporation or nonresident person at its last known address, subject to the rules for mailing provided in subdivision one of section seventy-two. Such warrant shall command the officer or employee to proceed in New York county, and he shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the director of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The director of finance may also, in his discretion, designate agents or retain counsel for the purpose of collecting, outside the state, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this part or under any of the named parts, against foreign corporations or other non-resident persons, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the director of finance shall deem proper and sufficient.

8. Action by city for recovery of taxes.--Action may be brought by the corporation counsel at the instance of the director of finance to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this part or under the named parts within six years prior to the date the action is commenced.

9. Release of lien.--The director of finance, if it finds that the interests of the city will not thereby be jeopardized, and upon such conditions as it may require, may release any property from the lien of any warrant filed under subdivision four or seven for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

10. Lien from due date of return.--(a) In addition to any other lien

provided for in this section, each tax imposed by the named parts shall become a lien on the date on which the return is required to be filed (without regard to any extension of time for filing such return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax imposed by any of the named parts, or to do business in this state in a corporate or organized capacity. Each such tax shall be a lien and binding upon the real and personal property of the taxpayer, or of a transferee liable to pay the same, until the same is paid in full, except that no lien for any additional tax assessed pursuant to this part shall be enforceable against property which prior to the issuance to the taxpayer of a notice of deficiency under section seventy-two had been transferred in good faith to a bona fide transferee for value. But the lien of each such tax shall be subject to the lien of any mortgage indebtedness existing against real property previous to the time when the tax became a lien and where such mortgage indebtedness has been incurred in good faith and was not given, directly or indirectly, to any officer or stockholder of the corporation owning such real property, whether as a purchase money mortgage or otherwise, and shall also be subject to the lien of local taxes and assessments, without regard to when the lien for such taxes and assessments may have accrued. If the return is filed and the tax shown on the report to be due is paid on or before the date on which the report is required to be filed, without regard to any extensions of time for filing such report, the lien shall not be enforceable against the interest of any purchaser or mortgagee in property which is thereafter, but prior to the issuance to the taxpayer of a notice of deficiency under section seventy-two transferred to a bona fide purchaser for value, or mortgaged where the mortgage indebtedness is incurred in good faith and the mortgage is not given, directly or indirectly, to any officer or stockholder of the corporation. In any action to foreclose any such mortgage, or to foreclose the lien of local taxes or assessments, to which the people of the state, or the city shall have been made a party defendant by reason of the existence of a lien for any such tax, or if no such tax was due or was a lien at the time of the commencement of such action and the filing of the notice of pendency thereof, but such a tax becomes due or becomes a lien subsequent to the time of the commencement of such action and the filing of the notice of

pendency thereof, such real property shall be sold and conveyed in such action free from any such tax lien, and any such tax lien may become a lien on any surplus moneys which may result from such sale, to be determined in the proceedings for the distribution of such surplus moneys. Where title to real property passes from an individual, or from a corporation owing no tax, to another corporation which is in default for such tax, the lien herein provided shall not be enforceable except as to any equity after the prior mortgage or purchase money mortgage encumbrance.

(b) The director of finance may, upon application made to him and the payment of a fee of five dollars, release any real property from the lien under this subdivision, provided payment be made to the director of finance of such a sum as the director of finance shall deem adequate consideration for such release, or deposit be made of such security or such bond be filed as the director of finance shall deem proper to secure payment of any such tax. The application for such release shall contain an accurate description of the property to be released together with such information as the director of finance may require. Such release may be recorded in any office in which conveyances of real estate are entitled to be recorded.

(c) All taxes, additions to tax, penalties and interest which have become a lien under this subdivision shall, after the expiration of ten years from date they become due and payable, cease to be a lien (1) as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such taxes, additions to tax, penalties or interest and (2) as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such taxes, additions to tax, penalties or interest, as against such purchasers or holders. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 84. Transferees. 1. General.--The liability, at law or in equity,

of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the director of finance under this part or under the named parts, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes, in case of successive transfers, donee, heir, legatee, devisee, distributee, and successor by merger, consolidation or other reorganization.

2. Exceptions.--

(a) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the director of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(b) If, before the expiration of the time prescribed in subdivision one or the immediately preceding paragraph of this subdivision for the assessment of the liability, the director of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision two of section seventy-eight. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision two of section seventy-eight on the amount of the credit or refund, the periods

specified in subdivision one of section seventy-eight shall be increased by the period from the date of such expiration to the date of the agreement.

3. Period for assessment against certain transferors.--For purposes of this section, if any person is deceased or is a corporation which has terminated its existence, the period of limitation for assessment against such person or corporation shall be the period that would be in effect had death or termination of existence not occurred.

4. Evidence.--The director of finance shall use his powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision three of section eighty for rule as to burden of proof.

§ 85. Jeopardy assessment. 1. Authority for making.--If the director of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall, notwithstanding the provisions of section seventy-two immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the director of finance for the payment thereof.

2. Notice of deficiency.--If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section seventy-two, then the director of finance shall mail a notice under such section within sixty days after the making of the assessment.

3. Amount assessable before decision of director of finance.--The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the director of finance. The director of finance may, at any time before rendering his

decision, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The director of finance may in his decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

4. Amounts assessable after decision of director of finance.--If the jeopardy assessment is made after the decision of the director of finance is rendered, such assessment may be made only in respect of the deficiency determined by the director of finance in his decision.

5. Expiration of right to assess.--A jeopardy assessment may not be made after the decision of the director of finance has become final or after the taxpayer has made an application for review of the decision of the director of finance.

6. Collection of unpaid amounts.--When a petition has been filed with the director of finance and when the amount which should have been assessed has been determined by a decision of the director of finance which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the director of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section seventy-seven without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the director of finance.

7. Abatement if jeopardy does not exist.--The director of finance may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the director of finance in respect of the deficiency has been rendered or, if no petition is filed with the director of finance, after the expiration of the period for filing such petition. The period of limitation on the

making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

8. Bond to stay collection.--The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the director of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section seventy-two is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

9. Petition to director of finance.--If the bond is given before the taxpayer has filed its petition under section eighty, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the director of finance which has become final. If the director of finance determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be

proportionately reduced when the decision of the director of finance is rendered.

10. Stay of sale of seized property pending director's decision.--Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold--

(a) if subdivision two is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section eighty for filing a petition with the director of finance, and

(b) if a petition is filed with the director of finance (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision one were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the director of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

11. Interest.--For the purpose of subdivision one of section seventy-five, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

12. Early termination of taxable year.--If the director of finance finds that a taxpayer designs quickly to remove its property from this state, or to conceal its property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the director of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due

and payable. If any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the director of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

13. Reopening of taxable period.-- Notwithstanding the termination of the taxable period of the taxpayer by the director of finance, as provided in subdivision twelve, the director of finance may reopen such taxable period each time the taxpayer is found by the director of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the director of finance may be reopened by the taxpayer if it files with the director of finance a true and accurate return under any of the named parts for such taxable period, together with such other information as the director of finance may by regulations prescribe.

14. Furnishing of bond where taxable year is closed by the director of finance.--Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision twelve prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the director of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes for prior years.

§ 86. Criminal penalties. 1. Attempt to evade tax.--Any corporation or person who, with intent to evade any tax or any requirement of this part or of any of the named parts, or any lawful requirement of the director of finance thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under the provisions of this part or of any of the named parts, or who with like intent, shall make, render, sign or certify any false or fraudulent return, declaration or statement, or shall supply any false or fraudulent information, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed five thousand dollars or be

imprisoned not to exceed one year, or both, at the discretion of the court. The term "person" as used in this section includes an officer, employee or agent of a corporation who as such officer, employee or agent is under a duty to perform the act in respect of which the violation occurs.

2. Limitation.--Notwithstanding the provisions of section one hundred forty-two of the code of criminal procedure or of any other law, a prosecution for any offense under this section may be commenced at any time not later than three years after the commission of such offense, provided that, if such offense is the failure to do an act required by or under the provision of this part to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date.

3. Two or more charges.--In the prosecution of offenses under this section, if there are two or more charges against any person or corporation, involving a violation or violations of any provision or provisions of this part or of any of the named parts, whether for the same or different taxable years, instead of returning several indictments or filing several informations, all of such charges may be joined in one indictment or information, in separate counts, and if two or more indictments are found, or two or more informations are filed, the court may order them to be consolidated. If a person or corporation shall be convicted of two or more offenses constituting different crimes set forth in different counts of one indictment or information, or in separate indictments or informations consolidated as hereinbefore provided, the court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively.

4. Miscellaneous rules.-- Any prosecution under this section may be conducted in any county where the person or corporation to whose tax liability the proceeding relates resides, or has a place of business, or from which such person or corporation received any income, or in any county in which any such crime is committed. The corporation counsel of the city imposing the tax shall have concurrent jurisdiction with any

district attorney in the prosecution of any offenses under this section. If the provisions of this section conflict with those contained in any other law, this section shall control. The certificate of the director of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this part or of any of the named parts, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied. All fines levied under this section shall be paid to the director of finance and deposited in the same manner as revenues collected or received under any of the named parts.

§ 87. General powers of director of finance. 1. General.--The director of finance shall administer and enforce the tax imposed by the named parts and he is authorized to make such rules and regulations, and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of this part and of the named parts; and he may delegate his powers and functions under all parts of this title to one of his deputies or to any employee or employees of his department.

2. Examination of books and witnesses.--The director of finance for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax liability of any corporation, shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the corporation rendering the return through any officer or employee of such corporation, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

3. Abatement authority.--The director of finance, of his own motion, may abate any small unpaid balance of an assessment of tax, or any

liability in respect thereof, if the director of finance determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

4. Special refund authority.--Where no questions of fact or law are involved and it appears from the records of the director of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this part or of any of the named parts, the director of finance at any time, without regard to any period of limitations, shall have the power, upon making a record of his reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

5. Authority to set interest rates.--The commissioner of finance, by regulation, may set the rate of interest to be paid pursuant to sections six and eight of part two, sections seventy-five, seventy-six and seventy-nine of this part, and those sections of any local law imposing a tax such as is imposed by article thirty-two of the tax law which correspond to sections fourteen hundred sixty-one and fourteen hundred sixty-three of the tax law. Such rate shall be the same for each such section and shall be not less than six percent per annum nor more than the rate of interest prescribed by the banking board pursuant to section fourteen-a of the banking law, but if the commissioner of finance has not set such rate, interest at six percent per annum shall apply, except that for purposes of subdivision five of section eight of part two interest at the rate of four percent per annum shall apply. Any rate set by the commissioner of finance shall go into effect not less than sixty days after the regulation is promulgated, and shall apply only to taxes due or paid for a calendar or fiscal year or other period commencing after the effective date of such regulation.

6. Interest required to be paid.--In computing the amount of any interest required to be paid under this part or any of the named parts by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision three of section seventy-six of this part.

7. Fractional parts of a dollar.--The commissioner of finance may provide by regulation (a) that in any determination, assessment, collection, refund or credit under the named parts, a fractional part of a dollar may be disregarded unless it amounts to fifty cents or more, in which case it shall be increased to one dollar, and (b) that any person making a return, report or other statement required to be filed under the named parts, may elect with respect to any amount required to be shown thereon, if such amount is other than a whole dollar amount, either to disregard the fractional part of a dollar or to disregard the fractional part of a dollar unless it amounts to fifty cents or more, in which case the amount (determined without regard to the fractional part of the dollar) shall be increased by one dollar; provided, however, that such election shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on any such return, report or other statement but shall be applicable only to the final amount required to be shown thereon.

§ 88. Secrecy required of official; penalty for violation. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the director of finance, the department of finance of the city, any officer or employee of the department of finance of the city, or any person who, pursuant to this section, is permitted to inspect any report or return, or to whom any information contained in any report or return, is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or

disclosed in any report or return, under this title. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding involving the collection of a tax due under this title to which the city, is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this title when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports or returns or of the facts shown thereby as are pertinent to the action or proceeding, and no more. The director of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the formal hearing provided for in section eighty of this part. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a copy of any report filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this title or under any local law of the city imposed as authorized by the act authorizing the adoption of this title has been recommended by the director of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns of any taxpayer by the duly designated officers or employees of the city for purposes of an audit under this title or an audit authorized by the act authorizing the adoption of this title; and nothing in this part shall be construed to prohibit the publication of the percentage of capital stock, gross premiums or net income of any corporation which may be required to be allocated within the city for purposes of the tax imposed by any of the named parts.

2. Any offense against subdivision one of this section shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if

the offender be an officer or employee of the state or city, he shall be dismissed from office and be incapable of holding any public office in the city or this state for a period of five years thereafter.

3. Notwithstanding any provisions of this section, the director of finance may permit the secretary of the treasury of the United States or his delegates, or the proper officer of this or any other state charged with tax administration, or the authorized representative of either such officer, to inspect the returns or reports filed under any of the named parts, or may furnish to such officer or his authorized representative an abstract of any such return or report or supply information concerning an item contained in any such return or report, or supply him with information concerning an item contained in any such return or report, or disclosed by an investigation of tax liability under any of the named parts, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the director of finance and such information is to be used for tax purposes only; and provided further the director of finance may furnish to the secretary of the treasury of the United States or his delegates or to the tax commission of the state of New York or its delegates such returns or reports filed under any of the named parts and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the director of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury or his delegates or to such tax commission or its delegates. Where the director of finance has so authorized use of returns, reports or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns, reports or other information.

§ 89. Disposition of revenues. All revenues resulting from the imposition of the taxes under this title shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

§ 90. Inconsistencies with other laws. If any provision of this title is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this title shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

§ 91. Effect of invalidity in part. If any clause, sentence, paragraph, subsection, section or other part of this title or the application thereof to any person or circumstances, shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this title or the application of such part held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section or other part thereof directly involved in such holding, or to the person and circumstances therein involved.

§ 2. Notwithstanding any provision of law to the contrary, any city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing for any such city a tax on unincorporated businesses. The terms of such local law shall be, substantially, as follows except that any such local law may be amended for the purpose of conforming it with similar provisions of article twenty-three of the tax law as presently in effect or as it may be amended and except that the appendix in any such local law may be amended for the purpose of conforming it with the United States internal revenue code or other federal laws relating to taxation as presently in effect or as they may be amended;

CITY UNINCORPORATED BUSINESS INCOME TAX

- Section 101. Imposition of tax.
- 101-a. Taxable years to which tax applies; tax for taxable years beginning prior to and ending after January first, nineteen hundred sixty-six.
102. Meaning of terms.
103. Unincorporated business defined.
104. Unincorporated business taxable income.
105. Unincorporated business gross income.
106. Unincorporated business deductions.
107. Allocation to the city.
108. Deductions not subject to allocation.
109. Unincorporated business exemptions.
115. Declarations of estimated tax.
116. Payments of estimated tax.
121. Accounting periods and methods.
122. Returns, payment of tax.
123. Time and place for filing returns and paying tax.
124. Signing of returns and other documents.
125. Extensions of time.
126. Requirements concerning returns, notices, records and statements.
127. Report of change in federal taxable income.
- 127-A. Reporting of changes or corrections in sales and compensating use tax liability.
128. Change of election.
129. Notice of deficiency.
130. Assessment.
131. Limitations on assessment.
132. Interest on underpayment.
133. Additions to tax and civil penalties.
134. Overpayment.
135. Limitations on credit or refund.
136. Interest on overpayment.
137. Petition to director of finance.
138. Review of director's decision.

- 139. Mailing rules; holidays.
- 140. Collection, levy and liens.
- 141. Transferees.
- 142. Jeopardy assessment.
- 143. Criminal penalties.
- 144. Armed forces relief provisions.
- 145. General powers of director of finance.
- 146. Secrecy requirement and penalties for violation.
- 147. Effect of invalidity in part.
- 148. Inconsistencies with other laws.
- 149. Deposit and disposition of revenues by director of finance*.

* Does not conform to section heading in text of law.

§ 101. Imposition of tax. (a) General.--A tax at the rate of four percent is hereby imposed for each taxable year, beginning with taxable years ending after January first, nineteen hundred sixty-six, on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within the city. This tax shall be in addition to any other taxes imposed.

(b) Credit against tax.--If the tax computed under subdivision (a) is six hundred dollars or less, a credit shall be allowed for the entire amount of such tax. If the tax computed under subdivision (a) exceeds six hundred dollars but is less than eight hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is eight hundred dollars minus the amount of such tax and the denominator of which is two hundred dollars. If the tax computed under subdivision (a) is eight hundred dollars or more, no credit shall be allowed. If separate partnerships, joint ventures or other unincorporated entities have substantially the same partners or members, each of such partners or members has substantially the same interest in each of such partnerships, joint ventures or other unincorporated entities, and such partnerships, joint ventures or other unincorporated entities are engaged in substantially the same business or businesses or in substantially related businesses, all of such partnerships, joint ventures or other unincorporated entities shall be

treated as one unincorporated business for purposes of this subdivision. The preceding sentence shall not be construed to limit or affect the meaning or application of any other provision of this title.

(c) Credit relating to stock transfer tax.

(1) In addition to any other credit permitted under this section, a taxpayer shall be allowed a credit, to be credited or refunded in the manner hereinafter provided in this subdivision, against the tax imposed by this title after the allowance of any other credit under this section. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer (except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of such tax law).

2. For purposes of this subdivision:

(a) the term "taxpayer" shall mean any unincorporated business subject to tax under this section registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph (b) of this paragraph, and

(b) the term "market making transaction" shall mean any transaction involving a sale (including a short sale) by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business (including transfers which are part of an underwriting),

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to clause (ii) (c) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section one hundred thirty-four of this chapter, except as otherwise provided in subdivision (g) of section one hundred sixteen of this chapter and subdivision (g) of section one hundred twenty-two of this chapter; provided, however, that the provisions of this title notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision (c) of section one hundred thirty-six of this chapter notwithstanding, interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

(d) Credit relating to certain sales and compensating use taxes. (1) In addition to the credits allowed by subdivisions (b) and (c) of this section, a taxpayer shall be allowed a credit against the tax imposed by this title to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven

hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by any local law of the city imposing a tax on utilities and vendors of utility services, for any periods embraced within the taxable year of the taxpayer under this part. (2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section one hundred thirty-four of this title. (3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section one hundred one, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(e) Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be:

(A) A maximum of three hundred dollars for each commercial employment opportunity and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the

state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event.

The director of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used by a taxpayer seeking the credit provided hereunder.

(B) Definitions: When used in this section, "Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only in an amount which does not exceed seventy-five cents per square foot of the total area utilized

by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section one hundred thirty-four of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section one hundred one, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(f) Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this part to be credited or refunded, without interest, in the manner hereinafter provided in this section.

(A) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities; and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided, shall be entitled to a credit against the tax imposed by this section. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this section, has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest." In determining that the granting of the tax credit is in the public interest, the board

shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city. The tax credit, if approved and certified by the industrial and commercial incentive board, shall be utilized annually on the filing of its tax return by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation, whichever period is shorter.

(B) Definitions. When used in this section, "employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Industrial and commercial incentive board" means the board created pursuant to section four hundred eighty-nine-~~nn~~ of the real property tax law.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section one hundred thirty-four of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by section one hundred one of this title, and such

amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(g) Credit relating to certain sales and compensating use taxes. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this title to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be equal to one-half the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-one, less one-half of any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of (i) parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting or for use directly and predominantly in or on telephone central office equipment or station apparatus or comparable telegraph equipment where such equipment or apparatus is used directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, and (ii) the services of installing, repairing, maintaining or servicing the tangible personal property described in subdivision (d) of this section, including the parts with a useful life of one year or less, tools and supplies described in clause (i) of this paragraph. The foregoing credit shall be reduced by the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by any local law of the city imposing a tax on utilities and vendors of utility services, for any periods embraced within the taxable year of the taxpayer under this title.

(2) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section one hundred thirty-four of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under this subdivision in a prior taxable year, the

amount of such tax refund or credit shall be added to the tax imposed by section one hundred one, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(h) Credit relating to certain sales and compensating use taxes on electricity used in manufacturing, processing or assembling.

(1) (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this title to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-four, less any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of electricity or electric service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembling. Provided, however, the amount of the credit allowed by this paragraph shall be reduced by the amount of any rebate or rebates received during the taxpayer's taxable year pursuant to a local law enacted in accordance with article two-G of the general city law.

(b) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this title to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the percentage specified below of the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-eight, less any credit or refund of such taxes, with respect to the purchase or use by a nonresidential energy user, as such term is defined in article two-G of the general city law, of electricity or electric service purchased at retail from the power authority of the state of New York or the port authority of the state of New York and New Jersey, provided, however, that no credit shall be allowed with respect to purchases from such port authority unless it shall be an "eligible vendor of energy services", as defined in paragraph one of subdivision (c) of section twenty-five-v of

the general city law, and shall have obtained a certification of eligibility in accordance with subdivision (b) of section twenty-five-w of such law; during the period commencing July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred eighty-nine the credit shall be in an amount equal to twenty-five per centum of such sales and compensating use taxes imposed; during the period commencing July first, nineteen hundred eighty-nine and ending June thirtieth, nineteen hundred ninety the credit shall be in an amount equal to fifty per centum of such taxes imposed; during the period commencing July first, nineteen hundred ninety and ending June thirtieth, nineteen hundred ninety-one the credit shall be in an amount equal to seventy-five per centum of such taxes imposed; and during the period commencing July first, nineteen hundred ninety-one and thereafter the credit shall be in an amount equal to one hundred per centum of such taxes imposed.

(c) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this title to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the percentage specified below of the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred eighty-eight, less any credit or refund of such taxes, with respect to the purchase or use by a non-residential fuel user of fuel or fuel service except fuel used to operate motor vehicles: during the period commencing July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred eighty-nine the credit shall be in an amount equal to twenty-five per centum of such sales and compensating use taxes imposed; during the period commencing July first, nineteen hundred eighty-nine and ending June thirtieth, nineteen hundred ninety the credit shall be in an amount equal to fifty per centum of such taxes; during the period commencing July first, nineteen hundred ninety and ending June thirtieth, nineteen hundred ninety-one the credit shall be in an amount equal to seventy-five per centum of such taxes; and during the period commencing July first, nineteen hundred ninety-one and thereafter the credit shall be in an amount equal to one hundred per centum of such

taxes imposed. For purposes of this subparagraph, the term "non-residential fuel user" shall mean any non-residential user of fuel, except a government agency or instrumentality thereof, public benefit corporation, or any entity that is exempt from the sales tax imposed pursuant to section eleven hundred seven of the tax law, provided that the term "non-residential fuel user" shall not include an owner or operator of residential income producing property, except a hotel.

(2) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section one hundred thirty-four of this title.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under this subdivision in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by this section and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(j) Relocation and employment assistance credit. (1) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-z of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to subdivision (b) of such section twenty-five-z a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to subdivision (b) of such section twenty-five-z a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section twenty-five-y of the general city law, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a

revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section twenty-five-y of the general city law is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this paragraph to any taxpayer that has elected pursuant to subdivision (d) of section twenty-five-z of the general city law to take such credit against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law; and provided that in the case of an eligible business that has obtained pursuant to subdivision (b) of such section twenty-five-z certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section twenty-five-y of the general city law. For purposes of this section, the terms "eligible aggregate employment shares", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-y of the general city law.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the

twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(3) The credit allowable under this section shall be deducted prior to the deduction of any other credit allowed by this title.

(4) In the case of a taxpayer that has obtained a certification of eligibility pursuant to subdivision (b) of section twenty-five-z of the general city law dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section twenty-five-y of the general city law, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph one of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section one hundred thirty-four of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of

eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

(k) Lower Manhattan relocation and employment assistance credit. (1) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-ee of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section twenty-five-ee of the general city law to take such credit against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law. For purposes of this subdivision, the terms "eligible aggregate employment shares," "eligible premises," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-dd of the general city law.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such

premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(1) Relocation assistance credit per employee. (1) In addition to any other credit allowed by this part other than a credit allowed by subdivision (j) of this section, a taxpayer that has obtained the certifications in accordance with subdivision (b) of section twenty-five-gg of the general city law shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section twenty-five-ff of the general city law.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the ten succeeding taxable years

during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the tenth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the tenth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such tenth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section seventy-seven of this title. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivision (b) of this section, but prior to the deduction of any other credit allowed by this section.

§ 101-a. Taxable years to which tax applies; tax for taxable years beginning prior to and ending after January first, nineteen hundred sixty-six. (a) General.--The tax imposed by section one hundred one, with any modification permitted by subdivision (b) of this section, is imposed for each taxable year beginning with taxable years ending on or after January first, nineteen hundred sixty-six.

(b) Alternate methods for determining tax for taxable years ending on or after January first, nineteen hundred sixty-six.--(1) The tax for any taxable year ending on or after January first, nineteen hundred sixty-six and before December thirty-first, nineteen hundred sixty-six, shall be an amount equal to the tax which would have been imposed had section one hundred one been in effect for the entire taxable year, multiplied by the number of months (or major portions thereof) in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months (or major portions thereof) in such taxable year.

(2) In lieu of the method of computation of tax prescribed in paragraph one, if the taxpayer maintained adequate records for the portion of any taxable year ending on or after January first, nineteen hundred sixty-six, and before December thirty-first, nineteen hundred sixty-six, which falls within the calendar year nineteen hundred sixty-six, the tax for such taxable year at the election of the taxpayer may be computed on the basis of the unincorporated business taxable income which the taxpayer would have reported had he filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of such taxable year ending before December thirty-first, nineteen hundred sixty-six. Such taxable year beginning January first, nineteen hundred sixty-six and ending before December thirty-first, nineteen hundred sixty-six, shall be deemed (unless clearly indicated otherwise) to be the taxable year of the taxpayer. For purposes of this paragraph two, the unincorporated business exemptions allowable under section one hundred nine, the credit allowable under subdivision (b) of section one hundred one and any net operating loss deduction as modified pursuant to subdivision two of section one hundred six shall each be reduced by the same part of such exemptions, credit, or net operating loss deduction (as the case may be) as the number of months (or major portions thereof) in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in such taxable year. Except as provided in this paragraph two, the tax for such period ending before December thirty-first, nineteen hundred sixty-six, shall be computed in accordance with the other provisions of this title.

§ 102. Meaning of terms. (a) General.--Unless a different meaning is clearly required, any term used in this title shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference in this title to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in this title as an appendix or as included by reference to an appendix of another title enacted by the same local law as enacts this title. (The quotation of the aforesaid laws of the United States is intended to make them a part of this title and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this title.)

(b) "State", "this state" or "the state" when used in this article shall mean the state of New York.

(c) "City", "this city", or "the city" when used in this title shall mean the city imposing this tax.

(d) "Local income taxes", when used in this title shall mean an income tax imposed by a political subdivision of a state.

(e) "Tax commission" when used in this title shall mean the tax commission of the state of New York.

(f) Attorney general.--The term "attorney general" when used in this title shall mean the attorney general of the state of New York.

(g) "Comptroller" when used in this title shall mean the comptroller of the state of New York.

(h) "Title" means this local law.

§ 103. Unincorporated business defined. (a) General.--An unincorporated business means any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership or fiduciary or a corporation in liquidation, but not including any entity subject to tax

under any local law imposed pursuant to section one of the act authorizing the adoption of this title and not including any entity doing an insurance business as a member or members of the New York insurance exchange described in paragraph (a) of subdivision one of section four hundred twenty-five-a of the insurance law.

Unincorporated businesses subject to tax under a local law of the city imposing a tax on utilities shall not be subject to tax under this part; provided, however, that unincorporated businesses, other than utility businesses subject to the supervision of the state department of public service, which are subject to tax under a local law of the city imposing a tax on vendors of utility services shall be subject to tax under this part on that percentage of their entire net income allocable to the city under section one hundred seven which their receipts other than those taxable under such local law taxing vendors of utility services is of their total receipts. If an individual or an unincorporated entity carries on two or more unincorporated businesses, all such businesses shall be treated as one unincorporated business for the purposes of this title.

(b) Services as employee, et cetera.--The performance of services by an individual as an employee or as an officer or director of a corporation, society, association, or political entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual.

(d) Purchase and sale for own account.--An individual or other unincorporated entity, except a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed engaged in an unincorporated business solely by reason of the purchase and sale of property for his own account, but this subdivision shall not apply if the unincorporated entity is taxable as a corporation for federal income tax purposes.

(e) Holding, leasing or managing real property.--An owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property.

(f) Sales representative.--An individual, other than one who maintains

an office or who employs one or more assistants or who otherwise regularly carries on a business, shall not be deemed engaged in an unincorporated business solely by reason of selling goods, wares, merchandise or insurance for more than one enterprise. For purposes of this subdivision, space utilized solely for the display of merchandise and/or for the maintenance and storage of records normally used in the course of business shall not be deemed an office, and the employment of clerical and secretarial assistance shall not be deemed the employment of assistants.

(g) Exempt trusts and organizations.--A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall not be deemed an unincorporated business (regardless of whether subject to federal income tax on unrelated business taxable income).

§ 104. Unincorporated business taxable income. The unincorporated business taxable income of an unincorporated business shall be the excess of its unincorporated business gross income over its unincorporated business deductions, allocated to the city, less the amount of:

(1) Its deductions under section one hundred eight not subject to allocation; and

(2) Its unincorporated business exemptions under section one hundred nine.

§ 105. Unincorporated business gross income. (a)

General.--Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, with the modifications specified in this section.

(b) Modifications increasing federal gross income.--There shall be added to federal gross income of the business the following items

attributable to the business:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party; and

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state or local income taxes.

(3) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section one hundred eight, if the property to which such election relates was sold or otherwise disposed of during the taxable year, the amount required by said subdivision to be added to federal gross income.

(4) The entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining federal gross income but only to the extent that such taxes are incurred and paid in market making transactions.

(5) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (d) of section one hundred one of this title.

(6) The amount allowed as an exclusion or deduction in determining federal gross income and also allowed for the taxable year under this section but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (e) of section one hundred one of this title.

(7) The amount allowed as an exclusion or deduction as rent in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (f) of section one hundred one of this title.

(8) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivisions (g) and (h) of section one hundred one of this title.

(9) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which would properly be includible for federal income tax purposes had the taxpayer not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

10. Upon the disposition of recovery property to which subdivision thirteen of section one hundred six applies, the amount, of any, by which the aggregate of the amounts described in such subdivision thirteen attributable to such property exceeds the aggregate of the amounts described in subdivision twelve of section one hundred six attributable to such property.

(c) Modifications reducing federal gross income.--There shall be subtracted from federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state or local income taxes under the laws of the United States;

(3) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of the city or this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes; and

(4) The amount of any refund or credit for overpayment of income taxes imposed by the city, this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes.

(5) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred

sixty-six, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between

(a) the amount of gain included in federal gross income with respect to each such property, and

(b) the amount of gain (if smaller than the amount described in (a)) that would be included in federal gross income with respect to each such property if the federal adjusted basis of such property on the date of the sale or other disposition had been equal to its fair market value on January first, nineteen hundred sixty-six, or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six; provided, however, that the total modification provided by this subparagraph shall not exceed the taxpayer's net gain from the sale or other disposition of all such property.

(6) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount properly includible in federal gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(7) Upon the disposition of recovery property to which subdivision thirteen of section one hundred six applies, the amount, if any, by which the aggregate of the amounts described in subdivision twelve of section one hundred six attributable to such property exceeds the aggregate of the amounts described in subdivision thirteen of section one hundred six attributable to such property.

(d) Upon the disposition of property to which subdivisions 14 and 15 of section 106 of this chapter apply, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

§ 106. Unincorporated business deductions. The unincorporated business deductions of an unincorporated business means the items of loss and deduction directly connected with or incurred in the conduct of the business, which are allowable for federal income tax purposes for the taxable year (including losses and deductions connected with any property employed in the business), with the following modifications:

(1) A deduction shall be allowed for charitable contributions of the unincorporated business, to the extent that such contributions would be deductible for federal income tax purposes if made by a corporation, but not in excess of five per centum of the amount by which the unincorporated business gross income exceeds the unincorporated business deductions computed without the benefit of any deduction for charitable contributions.

(2) A deduction shall be allowed for net operating losses incurred by the unincorporated business in an amount computed in the same manner as the net operating loss deduction which would be allowable for the taxable year for federal income tax purposes if the unincorporated business were an individual taxpayer (but determined solely by reference to the unincorporated business gross income and unincorporated business deductions, allocated to the city, of the unincorporated business). Such deduction shall not include any net operating loss sustained during any taxable year ending prior to January first, nineteen hundred sixty-six and for the purposes of this paragraph net operating losses shall be determined without regard to any deductions allowed pursuant to subsection (b) of section one hundred eight and any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such code as such section was in full force and effect on December thirty-first, nineteen hundred eighty.

(3) No deduction shall be allowed (except as provided in section one hundred eight) for amounts paid or incurred to a proprietor or partner

for services or for use of capital.

(4) No deduction shall be allowed for income taxes imposed by the city, this state or any other taxing jurisdiction.

(5) No deduction shall be allowed for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this title; (B) expenses paid or incurred for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; or (C) the amortizable bond premium on any bond the interest income from which is so exempt.

(6) No deduction shall be allowed in respect of the excess of net long-term capital gain over net short-term capital loss, but capital losses incurred in the unincorporated business shall be treated as ordinary losses and shall be allowed in full.

(7) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section one hundred eight, no deduction shall be allowed for expenditures with reference to the property to which such election relates, or for depreciation of such property, except as permitted by said subdivision.

(8) A deduction shall be allowed for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this title but exempt from federal income tax; (B) ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; and (C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this title but exempt from federal income tax.

(9) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(A) (i) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste (as the term "industrial waste" is defined in section twelve hundred two of the state public health law) from a point immediately preceding the point of such treatment, neutralization or

stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(ii) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section twelve hundred sixty-seven of the state public health law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(B) However, such deduction shall be allowed only

(i) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which; in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(ii) on condition that such facilities have been certified by the state commissioner of health or his designated representative, pursuant to the state public health law, as complying with the provisions of the state public health law, the state sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(iii) on condition that for the taxable year and all succeeding taxable years, no deduction for such expenditures or for depreciation of the same property allowed for federal income tax purposes shall be allowed under this title, except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph nine, for

only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing unincorporated business deductions for the taxable year and all succeeding taxable years, and

(iv) where the election provided for in subdivision (b) of section one hundred eight has not been exercised in respect to the same property.

(C) (i) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the director of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section one hundred thirty-one.

(ii) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the state public health law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the director of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section one hundred thirty-one.

(D) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph nine, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss allowable for federal income tax purposes for such taxable year.

(10) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), a deduction shall be allowed for any amount which the taxpayer could have excluded for purposes of this title had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(11) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), no deduction shall be allowed for any amount deductible for federal income tax purposes solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(12) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, no deduction shall be allowed for the amount allowable as a deduction under section one hundred sixty-eight of the internal revenue code.

(13) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been disallowed pursuant to subdivision eleven of this section, a taxpayer shall be allowed with respect to recovery property the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(14) For taxable years ending after September 10, 2001, in the case of qualified property described in paragraph 2 of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in subdivision 16 of this section, and other than qualified New York Liberty Zone property described in paragraph 2 of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), no deduction shall be allowed for the amount allowable as a deduction under section 167 of the internal revenue code.

(15) For taxable years ending after September 10, 2001, in the case of qualified property described in paragraph 2 of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in subdivision 16 of this section, and other than qualified New York Liberty Zone property described in paragraph 2 of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), a deduction shall be allowed with respect to such property equal to the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September 10, 2001.

(16) For purposes of subdivisions 14 and 15 of this section, qualified resurgence zone property shall mean qualified property described in paragraph 2 of subsection k of section 168 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 10, 2001. 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.

§ 107. Allocation to the city. (a) General.--If an unincorporated business is carried on both within and without the city, as determined under regulations of the director of finance, there shall be allocated to the city a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions. If the unincorporated business has no regular place of business outside the city, all of such excess shall be allocated to the city.

(b) Allocation by taxpayer's books.--The portion allocable to the city may be determined from the books of the business if the methods used in keeping such books are approved by the director of finance as fairly and equitably reflecting the income from the city.

(c) Allocation by formula.--If subdivision (b) does not apply to the taxpayer, the portion allocable to the city shall be determined by multiplying (A) the excess of its unincorporated business gross income over its unincorporated business deduction, by (B) the average of the following three percentages:

(1) Property percentage.--The percentage computed by dividing (A) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the unincorporated business and located both within and without the city. For this purpose, real property shall include real property rented to the unincorporated business.

(2) Payroll percentage.--The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or

incurred during the taxable year to employees in connection with the unincorporated business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on both within and without the city.

(3) Gross income percentage.--The percentage computed by dividing (A) the gross sales or charges for services performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within the city.

(d) Other allocation methods.--The portion allocable to the city shall be determined in accordance with rules and regulations of the director of finance if it shall appear to the director of finance that the income from the city is not fairly and equitably reflected under the provisions of either subdivision (b) or subdivision (c).

(e) Special rules for real estate.--Income and deductions from the rental of real property, and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivisions (b), (c), or (d), but shall be considered as entirely derived from or connected with the state, other than this state, in which such property is located or, if such property is located in this state, the political subdivision thereof.

§ 108. Deductions not subject to allocation. (a) In computing unincorporated business taxable income, there shall be allowed (without allocation under section one hundred seven) deductions for reasonable compensation not in excess of five thousand dollars for personal services of the proprietor and of each partner actively engaged in the unincorporated business, but the aggregate of such deductions shall not exceed twenty per centum of the unincorporated business taxable income computed without the benefit of any deductions under this section or the unincorporated business exemptions under section one hundred nine.

(b) At the election of the taxpayer there shall also be allowed (without allocation under section one hundred seven) either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of such items shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in paragraph three of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that no deduction shall be allowed pursuant to section one hundred six for depreciation of the same property, and the total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property shall not exceed its cost or other basis.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three of this subdivision which is used or to be used for purposes of research or development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that, for the taxable year and all succeeding taxable years, no deduction shall be allowed pursuant to section one hundred six on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowable for federal income tax purposes on account of such expenditures or on account of depreciation of the same property shall be proportionately reduced in determining the deductions allowable pursuant to section one hundred six for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the deduction allowable pursuant to this paragraph shall be limited to a proportionate part of

the expenditures relating thereto. If a deduction shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in the taxpayer's return for the first taxable year during which it occurs, and the director of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section one hundred thirty-one.

(3) Such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-five, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after such date.

(4) If the deductions allowable for any taxable year pursuant to this subdivision exceed the taxpayer's unincorporated business taxable income, determined without the allowance of such deductions, the excess may be carried over to the following taxable year or years and may be deducted (without allocation under section one hundred seven) in computing unincorporated business taxable income for such year or years.

(5) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the deductions so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal gross income the amount of the difference between such adjusted bases.

§ 109. Unincorporated business exemptions. In computing unincorporated business taxable income, there shall be allowed (without allocation under section one hundred seven):

(1) an unincorporated business exemption of five thousand dollars, prorated for taxable years of less than twelve months under regulations of the director of finance;

(2) if a partner in an unincorporated business is taxable under this title or under any local law imposed pursuant to section one of the act authorizing the adoption of this title, an exemption for the amount of the partner's proportionate interest in the excess of the unincorporated business gross income over the deductions allowed under sections one hundred six and one hundred eight, but this exemption shall be limited to the amount which is included in the partner's unincorporated business taxable income allocable to the city, or included in a corporate partner's net income allocable to the city.

§ 115. Declarations of estimated tax. (a) Requirement of declaration.--Except as provided in subdivision (j), every unincorporated business shall make a declaration of its estimated tax for the taxable year, containing such information as the commissioner of finance may prescribe by regulations or instruction, if its unincorporated business taxable income can reasonably be expected to exceed fifteen thousand dollars.

(b) Definition of estimated tax.-- The term "estimated tax" means the amount which an unincorporated business estimates to be its tax under this title for the taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision (c) of section one hundred one of this chapter.

(c) Time for filing declaration.--Except as hereinafter provided, a declaration of estimated tax required under this section shall be filed on or before April fifteenth of the taxable year provided, however, that if the requirements of subdivision (a) are first met:

(1) after April first and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) after June first and before September second of the taxable year, the declaration shall be filed on or before September fifteenth, or

(3) after September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(d) Filing of declarations on or before January fifteenth.--

(1) A declaration of estimated tax by an unincorporated business having an estimated unincorporated business taxable income from farming (including oyster farming) for the taxable year which is at least two-thirds of its total estimated unincorporated business taxable income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year.

(2) A declaration of estimated tax under this section of forty dollars or less for the taxable year may be filed at any time on or before January fifteenth of the succeeding year under regulations of the director of finance.

(e) Amendments of declaration.--An unincorporated business may amend a declaration under regulations of the director of finance.

(f) Return as declaration or amendment.--If on or before February fifteenth of the succeeding taxable year an unincorporated business subject to the estimated tax requirements of this section files its return for the taxable year for which the declaration is required, and pays on or before such date the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth of the succeeding year, and

(2) such return shall be considered as the amendment permitted by subdivision (e) to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(g) Fiscal year.--This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(h) Short taxable year.--An unincorporated business subject to the estimated tax requirements of this section and having a taxable year of less than twelve months shall make a declaration in accordance with

regulations of the director of finance.

(i) Declaration of unincorporated business under a disability.--The declaration of estimated tax for an unincorporated business which is unable to make a declaration for any reason shall be made and filed by the committee, fiduciary or other person charged with the care of the property of such unincorporated business (other than a receiver in possession of only a part of such property), or by his duly authorized agent.

(j) Declaration of estimated tax for taxable years beginning prior to the date of enactment of this title.--Notwithstanding subdivision (c) of this section, no declaration of estimated tax required by subdivision (a) of this section need be filed until sixty days after the date that this title becomes effective.

§ 116. Payments of estimated tax. (a) General.--The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following June fifteenth, September fifteenth, and January fifteenth, respectively.

(2) If the declaration is filed after April fifteenth and not after June fifteenth of the taxable year, and is not required to be filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September fifteenth and January fifteenth, respectively.

(3) If the declaration is filed after June fifteenth and not after September fifteenth of the taxable year, and is not required to be filed on or before June fifteenth of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January fifteenth.

(4) If the declaration is filed after September fifteenth of the taxable year, and is not required to be filed on or before September fifteenth of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Amendments of declaration.--If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) Application to short taxable year.--This section shall apply to a taxable year of less than twelve months in accordance with regulations of the director of finance.

(d) Fiscal year.--This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(e) Installments paid in advance.--An unincorporated business may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

(f) Cross reference.--For unincorporated businesses with taxable years beginning prior to the date that this title becomes effective, see subdivision (j) of section one hundred fifteen.

(g) The portion of an overpayment attributable to a credit allowable pursuant to subdivision (c) of section one hundred one of of this chapter may not be credited against any payment due under this section.

§ 121. Accounting periods and methods. (a) Accounting periods.--A taxpayer's taxable year under this title shall be the same as the

taxpayer's taxable year for federal income tax purposes.

(b) Accounting methods.--A taxpayer's method of accounting under this title shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, unincorporated business taxable income shall be computed under such method as in the opinion of the director of finance clearly reflects income.

(c) Change of accounting period or method.--(1) If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this title shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, beginning after January first, nineteen hundred sixty-six, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the director of finance.

§ 122. Returns, payment of tax. (a) General.--On or before the fifteenth day of the fourth month following the close of a taxable year, an unincorporated business income tax return shall be made and filed, and the balance of any tax shown on the face of such return, not previously paid as installments of estimated tax, shall be paid, by or for every unincorporated business having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ten thousand dollars, or having any amount of unincorporated business

taxable income.

(b) Decedents.--The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability.--The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(d) Estates and trusts.--The return for an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries.--If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Returns for taxable years ending prior to December thirty-first nineteen hundred sixty-six.--With respect to taxable years ending prior to December thirty-first nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the fourth month following the close of such taxable year or the sixtieth day following the date that this title becomes effective, whichever is later.

(g) Taxpayers with credit relating to stock transfer tax.--Subdivision (a) of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision (c) of section one hundred one of this chapter except that the tax, or balance thereof, payable to the director of finance in full pursuant to subdivision (a) of this section, at the time the return is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision (c) of section one hundred one of this chapter were not allowed.

§ 123. Time and place for filing returns and paying tax. A person required to make and file a return under this title shall, without assessment, notice or demand, pay any tax due thereon to the director of

finance on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The director of finance shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this title and for payment of any tax.

§ 124. Signing of returns and other documents. (a) General.--Any return, declaration, statement or other document required to be made pursuant to this title shall be signed in accordance with regulations or instructions prescribed by the director of finance. The fact that an individual's name is signed to a return, declaration, statement, or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

(b) Partnerships.--Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications.--The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this title, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 125. Extensions of time. (a) General.--The director of finance may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this title, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

(b) Furnishing of security.--If any extension of time is granted for

payment of any amount of tax, the director of finance may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the director of finance may require.

§ 126. Requirements concerning returns, notices, records and statements. (a) General.--The director of finance may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The director of finance may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the director of finance may deem sufficient to show whether or not such person is liable under this title for tax or for collection of tax.

(b) Notice of qualification as receiver, etc.--Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the director of finance, as may be required by regulation.

§ 127. Report of change in federal taxable income.--If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, the taxpayer shall report such change or correction in federal taxable income or such execution of such notice of waiver and the changes or corrections of his federal taxable income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver, or as otherwise required by the director of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file

within ninety days thereafter an amended return under this title, and shall give such information as the director of finance may require. The director of finance may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

§ 127-A. Reporting of changes or corrections in sales and compensating use tax liability.--Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this title was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 128. Change of election. Any election expressly authorized by this title, other than the election authorized by subdivision (d) of section one hundred five, may be changed on such terms and conditions as the director of finance may prescribe by regulation.

§ 129. Notice of deficiency. (a) General.--If upon examination of a taxpayer's return under this title the director of finance determines that there is a deficiency of income tax, he may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this title, the director of finance is authorized to estimate the taxpayer's city unincorporated business taxable income and tax thereon, from any information in his possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of the city. If the taxpayer is deceased or under a

legal disability, a notice of deficiency may be mailed to his last known address in or out of the city, unless the director of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment.--After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the director of finance a petition under section one hundred thirty-seven. If the notice of deficiency is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy.--No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section one hundred forty-two, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the director of finance, until the decision of the director of finance has become final. For exception in the case of judicial review of the decision of the director of finance, see subdivision (c) of section one hundred thirty-eight.

(d) Exceptions for mathematical errors.--If a mathematical error appears on a return (including an overstatement of the amount paid as estimated income tax), the director of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed.

Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section one hundred thirty-five (limiting credits or refunds after petition to the director of finance), or subdivision (b) of section one hundred thirty-seven (authorizing the filing of a petition with the director of finance based on a notice of deficiency) nor shall such assessment or collection be prohibited by the provisions of subdivision (c).

(e) Exception where change in federal taxable income is not

reported.--(1) If the taxpayer fails to comply with section one hundred twenty-seven in not reporting a change or correction increasing or decreasing his federal taxable income as reported on his federal income tax return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver described in such section, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected federal taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section one hundred twenty-seven, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section one hundred thirty-five (limiting credits or refunds after petition to the director of finance), or subdivision (b) of section one hundred thirty-seven (authorizing the filing of a petition with the director of finance based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c).

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his last known address in or out of the city, unless the director of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions.--The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the director of finance.

(g) Deficiency defined.-- For purposes of this title, a deficiency means the amount of the tax imposed by this title, less (i) the amount

shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by him or by the director of finance), and less, (ii) the amounts previously assessed (or collected without assessment) as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this title and the tax shown on the return shall both be determined without regard to payments on account of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

(h) Exception where change or correction of sales and compensating use tax liability is not reported.--(1) If a taxpayer fails to comply with section one hundred twenty-seven-A in not reporting a change or correction of his sales and compensating use tax liability or in not filing a copy of an amended return or report relating to his sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under section one hundred one, by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by section one hundred twenty-seven-A, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section one hundred thirty-five (limiting credits or refunds after petition to the commissioner of finance), or subdivision (b) of section one hundred thirty-seven (authorizing the filing of a petition with the commissioner of finance based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his last known address in or out of the city, and such notice shall be sufficient for purposes of this title. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

§ 130. Assessment. (a) Assessment date.--The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the director of finance shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section one hundred twenty-nine if no petition to the director of finance is filed, or if a petition is filed, then upon the date when a decision of the director of finance establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section one hundred twenty-seven concedes the accuracy of a federal adjustment, change or correction, any deficiency in tax under this title resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section one hundred thirty-one. If a report filed pursuant to section one hundred twenty-seven-A concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under this title resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section one hundred thirty-one. If a notice of additional tax due, as prescribed in subdivision (e) of section one hundred twenty-nine, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section one hundred

twenty-seven, is filed accompanied by a statement showing where in such federal determination and such notice of additional tax due are erroneous. If a notice of additional tax due, as prescribed in subdivision (h) of section one hundred twenty-nine, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by section one hundred twenty-seven-A, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers.--If the mode or time for the assessment of any tax under this title (including interest, additions to tax and assessable penalties) is not otherwise provided for, the director of finance may establish the same by regulations.

(c) Estimated income tax.--No unpaid amount of estimated tax under section one hundred sixteen shall be assessed.

(d) Supplemental assessment.--The director of finance may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section one hundred twenty-nine where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference.--For assessment in case of jeopardy, see section one hundred forty-two.

§ 131. Limitations on assessment. (a) General.--Except as otherwise provided in this section, any tax under this title shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) Time return deemed filed.--For purposes of this section a return of income tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(c) Exceptions.--(1) Assessment at any time.--The tax may be assessed at any time if--

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax,

(C) the taxpayer fails to comply with section one hundred twenty-seven in not reporting a change or correction increasing or decreasing his federal taxable income as reported on his federal income tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, or

(D) the taxpayer fails to file a report or amended return or report required under section one hundred twenty-seven-A, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this title was claimed.

(2) Extension by agreement.--Where, before the expiration of the time prescribed in this section for the assessment of tax, both the director of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal income. If the taxpayer shall, pursuant to section one hundred twenty-seven, report a change or correction or file an amended return increasing or decreasing his federal taxable income or report the execution of a notice of waiver and the changes and corrections on which it is based, or a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may

otherwise be made.

(4) Deficiency attributable to net operating loss carryback.--If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund.--An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment.--If a return is required for a decedent or for his estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d).

(7) Report on use of certain property.--Under the circumstances described in paragraph two of subdivision (b) of section one hundred eight, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility.--Under the circumstances described in paragraph (9) of section one hundred six, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph.

(9) Report of change or corrected sales and compensating use tax liability.--If the taxpayer files a report or amended return or report required under section one hundred twenty-seven-A, in respect of a change or correction of sales and compensating use tax liability, the assessment (if not deemed to have been made upon the filing of the report) may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall

not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Omission of income on return.--The tax may be assessed at any time within six years after the return was filed if (1) a taxpayer omits from his city unincorporated business gross income an amount properly includible therein which is in excess of twenty-five per centum of the amount of city unincorporated business gross income stated in the return, or (2) an estate or trust omits income from its return in an amount in excess of twenty-five per cent of its income determined as if it were an individual.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the director of finance of the nature and amount of such item.

(e) Suspension of running of period of limitation.--The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the director of finance is prohibited under subdivision (c) of section one hundred twenty-nine from making the assessment or from collecting by levy.

§ 132. Interest on underpayment. (a) General.--If any amount of income tax is not paid on or before the last date prescribed in this title for payment, interest on such amount at the rate set by the commissioner of finance pursuant to section one hundred forty-five, or, if no rate is set, at the rate of six percentum per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) Exception as to estimated tax.--This section shall not apply to any failure to pay estimated tax under section one hundred sixteen.

(c) Exception for mathematical error.--No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this title (including any

extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(e) Suspension of interest on deficiencies.--If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the director of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(f) Tax reduced by carryback.--If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(g) Interest treated as tax.--Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this title to the tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(h) Interest on penalties or additions to tax.--Interest shall be imposed under subdivision (a) in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section one hundred forty, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(i) Payment prior to notice of deficiency.--If, prior to the mailing to the taxpayer of a notice of deficiency under subdivision (b) of section one hundred twenty-nine, the director of finance mails to the taxpayer a notice of proposed increase of tax and within thirty days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the director of finance, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

(j) Payment within ninety days after notice of deficiency.-- If a notice of deficiency under section one hundred twenty-nine is mailed to

the taxpayer, and the total amount specified in such notice is paid on or before the ninetieth day after the date of mailing, interest under this section shall not be imposed for the period after the date of the notice.

(k) Payment within ten days after notice and demand.--If notice and demand is made for payment of any amount under subdivision (b) of section one hundred forty, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(l) Limitation on assessment and collection.--Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(m) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the rate set by the commissioner of finance pursuant to section one hundred forty-five, or, if no rate is set, at the rate of six per centum per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(n) Satisfaction by credits.--If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 133. Additions to tax and civil penalties. (a) Failure to file tax return.--In case of failure to file a tax return under this title on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction

thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For this purpose, the amount of tax required to be shown on the tax return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Deficiency due to negligence.--If any part of a deficiency is due to negligence or intentional disregard of this title or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five per cent of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax.--If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate set by the commissioner of finance pursuant to section one hundred forty-five, or, if no rate is set, at the rate of six per centum per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety per cent of the tax shown on the return for the taxable year (or if no return was filed, ninety percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death. In any case in which there would be no underpayment if this subdivision were applied by substituting "eighty percent" for "ninety percent" where it appears in the second preceding sentence, the addition to tax under this subdivision shall be equal to seventy-five percent of the amount otherwise determined under this subdivision.

(d) Exception to addition for underpayment of estimated tax.--The addition to tax under subdivision (c) with respect to any underpayment of any installment shall not be imposed of the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the

following is the lesser--

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

(A) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to ninety per cent of the tax for the taxable year computed by placing on an annualized basis the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the unincorporated business taxable income shall be placed on an annualized basis by--

(i) multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid, and

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(D) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner--

(I) take the unincorporated business taxable income for all months during the taxable year preceding the filing month,

(II) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(III) determine the tax on the amounts determined under subclause (II), and

(IV) multiply the tax determined under subclause (III) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of clause (i)--

(I) the base period percentage for any period of months shall be the average percent which the unincorporated business taxable income for the corresponding months in each of the three preceding years bears to the unincorporated business taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of new unincorporated businesses and other similar circumstances, and

(II) the term "filing month" means the month in which the installment is required to be paid; or

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) Allocation of unincorporated business tax.--(1) Except as provided in paragraph two hereof, subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall not apply in the case of any taxpayer which had unincorporated business taxable income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(2) The amount treated as the estimated tax under subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

(f) Deficiency due to fraud.--If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subdivision (a) or (b).

(g) Additional penalty.--Any taxpayer who with fraudulent intent shall fail to pay any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this title, shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this title, to be imposed assessed and collected by the

director of finance. The director of finance shall have the power, in his discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) Additions treated as tax.--The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this title to income tax or tax imposed by this title, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section one hundred twenty-nine, this subdivision shall not apply to--

(1) any addition to tax under subdivision (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c); and

(3) any additional penalty under subdivision (g).

(i) Determination of deficiency.--For purposes of subdivisions (b) and (f), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(j) Substantial understatement of liability.--If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return. The amount of the understatement under the preceding sentence shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the

return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

§ 134. Overpayment. (a) General.--The director of 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 title or by titles on the person who made the overpayment, and the balance shall be refunded.

(b) Credits against estimated tax.--The director of 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 (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(c) Rule where no tax liability.--If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(d) Assessment and collection after limitation period.--If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

§ 135. Limitations on credit or refund. (a) General.--Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of

the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement.--If an agreement under the provisions of paragraph two of subdivision (c) of section one hundred thirty-one (extending the period for assessment of income tax) is made within the period prescribed in subdivision (a) for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) if a claim had been filed on the date the agreement was executed.

(c) Notice of change or correction of federal taxable income.--If a taxpayer is required by section one hundred twenty-seven to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the director of finance, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the director of finance. If the report or amended return required by section one hundred twenty-seven is not filed within the ninety day period therein specified, interest or any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such

credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback.--A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision (b) in respect of such taxable year, or within the period prescribed in subdivision (c), where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period.--No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section one hundred thirty-eight after the expiration of the applicable period of limitation specified in this title unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this title.

(f) Effect of petition to director of finance.--If a notice of deficiency for a taxable year has been mailed to the taxpayer under section one hundred twenty-nine and if the taxpayer files a timely petition with the director of finance under section one hundred thirty-seven, he may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

(1) as to overpayments determined by a decision of the director of finance which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the director of finance which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c).

(g) Limit on amount of credit or refund.-- The amount of overpayment determined under subdivision (f) shall, when the decision of the director of finance has become final, be credited or refunded in accordance with subdivision (a) of section one hundred thirty-four and shall not exceed the amount of tax which the director of finance determines as part of his decision was paid--

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivisions (a), (b) or (c), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the director of finance finds that there is an overpayment.

(h) Early return.--For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid income tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

(j) Cross reference.--For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section one hundred thirty-four.

(k) Notice of change or correction of sales and compensating use tax liability.--If a taxpayer is required by section one hundred twenty-seven-A to file a report or amended return in respect of a change or correction of his sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. If the report or amended return required by section one hundred twenty-seven-A

is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

§ 136. Interest on overpayment. (a) General.--Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the rate set by the commissioner of finance pursuant to section one hundred forty-five, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this title:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date (to be determined by the commissioner of finance), preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) late returns. Notwithstanding paragraph one or two of this subdivision, in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax and payment of estimated tax.--The provisions of subdivisions (h) and (i) of section one hundred thirty-five applicable in determining the date of payment of tax for

purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Income tax refund within three months of due date of tax.--If any overpayment of tax imposed by this title is refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on such overpayment.

(d) Refund of income tax caused by carryback.--For purposes of this section, if any overpayment of tax imposed by this title results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form.--

(1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if--

(A) such return is filed on a permitted form, and

(B) such return contains--

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(f) Cross-reference.--For provision terminating interest after failure to file notice of federal change under section one hundred twenty-seven, see subdivision (c) of section one hundred thirty-five.

§ 137. Petition to director of finance. (a) General.--The form of a petition to the director of finance, and further proceedings before the director of finance in any case initiated by the filing of a petition, shall be governed by such rules as the director of finance shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by the director of finance, or by a hearing officer designated by the director of finance to take evidence and report to the director of finance. The director of finance shall decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his last known address, and such notice shall set forth the director's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency.--Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section one hundred twenty-nine, the taxpayer may file a petition with the director of finance for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section one hundred thirty-five.

(c) Petition for refund.--A taxpayer may file a petition with the director of finance for the amounts asserted in a claim for refund if--

(1) the taxpayer has filed a timely claim for refund with the director of finance,

(2) the taxpayer has not previously filed with the director of finance a timely petition under subdivision (b) for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section one hundred thirty-five, and

(3) either (A) six months have expired since the claim was filed, or (B) the director of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless

prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the director of finance. If a taxpayer files a written waiver of the requirement that he be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion of deficiency after filing petition.--(1) Petition for redetermination of deficiency.--If a taxpayer files with the director of finance a petition for redetermination of a deficiency, the director of finance shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section one hundred thirty-three, if claim therefor is asserted at or before the hearing under the rules of the director of finance.

(2) Petition for refund.--If the taxpayer files with the director of finance a petition for credit or refund for a taxable year, the director of finance may

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the director of finance, and within the period in which an assessment would be timely under section one hundred thirty-one, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the director of finance.

(3) Opportunity to respond.--A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the director of finance under this subdivision.

(4) Restriction on further notices of deficiency.--If the taxpayer files a petition with the director of finance under this section, no notice of deficiency under section one hundred twenty-nine may thereafter be issued by the director of finance for the same taxable year, except in case of fraud or with respect to a change or correction in federal taxable income required to be reported under section one hundred twenty-seven or with respect to a state change or correction of sales and compensating use tax liability required to be reported under section one hundred twenty-seven-A.

(e) Burden of proof.--In any case before the director of finance under this title, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the director of finance:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under section one hundred twenty-seven, and of which change or correction the director of finance had no notice at the time he mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under section one hundred twenty-seven-A, and of which change or correction the commissioner of finance had no notice at the time he mailed the notice of deficiency.

(f) Evidence of related federal or state determination.--Evidence of a federal or state determination relating to issues raised in a case before the director of finance under this section shall be admissible, under rules established by the director of finance.

(g) Jurisdiction over other years.--The director of finance shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 138. Review of director's decision. (a) General.--A decision of the director of finance shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within

four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer.--The review of a decision of the director of finance provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this title.

(c) Assessment pending review; review bond.--Irrespective of any restrictions on the assessment and collection of deficiencies, the director of finance may assess a deficiency after the expiration of the period specified in subdivision (a), notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his application for review is made, has paid the deficiency, has deposited with the director of finance the amount of the deficiency, or has filed with the director of finance a bond (which may be a jeopardy bond under subdivision (h) of section one hundred forty-two) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against him in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the director of finance is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review.--If the amount of a deficiency determined by the director of finance is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of director's decision.--A decision of the director of finance shall become final upon the expiration of the period specified in subdivision (a) for making an application for review, if no such application has been duly made within such time, or if such

application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the director of finance of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the director of finance shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

§ 139. Mailing rules; holidays. (a) Timely mailing.--If any claim, statement, notice, petition, or other document (including to the extent authorized by the director of finance, a return or a declaration of estimated tax) required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of this title is, after such period or such date, delivered by the United States mail to the director of finance, bureau, office, officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determine with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the director of finance, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the director of finance, bureau, office, officer or person to which or to whom addressed. To the extent that the director of finance shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the director of finance.

(b) Last known address.--For purposes of this title, a taxpayer's last known address shall be the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the director of finance of a change of address.

(c) Last day a Saturday, Sunday or legal holiday.--When the last day prescribed under authority of this title (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

§ 140. Collection, levy and liens. (a) Collection procedures.--The taxes imposed by this title shall be collected by the director of finance, and he may establish the mode or time for the collection of any amount due it under this title if not otherwise specified. The director of finance shall, upon request, give a receipt for any sum collected under this title. The director of finance may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this title in such manner, at such times, and under such conditions as the director of finance may prescribe; and the director of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the director of finance.

(b) Notice and demand for tax.--The director of finance shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the director of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand.--If any person liable under this title for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within the ten days after notice and demand therefor is given to such person under subdivision (b), the director of finance may within six years after the date of such assessment issue a warrant under his official seal directed to the

sheriff of any county of the state, or to any officer or employee of the department of finance, commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the director of finance and pay to him the money collected by virtue thereof within sixty days after the receipt of the warrant. If the director of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the director of finance and upon failure or refusal to pay such tax or other amount the director of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created.--Any sheriff or officer or employee who receives a warrant under subdivision (c) shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment.--When a warrant has been filed with the county clerk the director of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution.--The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not a resident of this state.--Where a notice and demand under subdivision (b) shall have been given to a taxpayer who is not then a resident of this state, and it appears to the director of finance

that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the director of finance may, in accordance with subdivision (c), issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his last known address, subject to the rules for mailing provided in subdivision (a) of section one hundred twenty-nine. Such warrant shall command the officer or employee to proceed in New York county, and he shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the director of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The director of finance may also, in his discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this title against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the director of finance shall deem proper and sufficient.

(h) Action by city for recovery of taxes.--Action may be brought by the corporation counsel at the instance of the director of finance as agent and trustee for the city to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this title within six years prior to the date the action is commenced.

(i) Release of lien.--The director of finance, if he finds that the interests of the city will not thereby be jeopardized, and upon such conditions as he may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

§ 141. Transferees. (a) General.--The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the director of finance under this title, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) Exceptions.--(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the director of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) or the immediately preceding paragraph of this subdivision for the assessment of the liability, the director of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section one hundred thirty-five. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section one hundred thirty-five on the amount of the credit or refund, the periods specified in subdivision (a) of section one hundred

thirty-five shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor.--If any person is deceased, the period of limitation for assessment against him shall be the period that would be in effect if he had lived.

(d) Evidence.--Notwithstanding the provisions of subdivision (e) of section one hundred forty-five the director of finance shall use his powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section one hundred thirty-seven for rule as to burden of proof.

§ 142. Jeopardy assessment. (a) Authority for making.--If the director of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall, notwithstanding the provisions of section one hundred twenty-nine and one hundred forty-four, and immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the director of finance for the payment thereof.

(b) Notice of deficiency.--If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section one hundred twenty-nine, then the director of finance shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of director of finance.--The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has heretofore filed a petition with the director of finance. The director of finance may, at any time before rendering his decision, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The director of finance may in his decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of director of finance.--If the

jeopardy assessment is made after the decision of the director of finance is rendered, such assessment may be made only in respect of the deficiency determined by the director of finance in his decision.

(e) Expiration of right to assess.--A jeopardy assessment may not be made after the decision of the director of finance has become final or after the taxpayer has made an application for review of the decision of the director of finance.

(f) Collection of unpaid amounts.--When a petition has been filed with the director of finance and when the amount which should have been assessed has been determined by a decision of the director of finance which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the director of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section one hundred thirty-four without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the director of finance.

(g) Abatement if jeopardy does not exist.--The director of finance may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the director of finance in respect of the deficiency has been rendered or, if no petition is filed with the director of finance, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection.--The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the director of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired,

conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section one hundred twenty-nine is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to director of finance.--If the bond is given before the taxpayer has filed his petition under section one hundred thirty-seven, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the director of finance which has become final. If the director of finance determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the director of finance is rendered.

(j) Stay of sale of seized property pending director of finance decision.--Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold--

(1) if subdivision (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section one hundred thirty-seven for filing a petition with the director of finance, and

(2) if a petition is filed with the director of finance (whether before or after the making of such jeopardy assessment), prior to the

expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the director of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest.--For the purpose of subdivision (a) of section one hundred thirty-two, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year.--If the director of finance finds that a taxpayer designs quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceeding taxable year unless such proceedings be brought without delay, the director of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceeding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the director of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period.--Notwithstanding the termination of the taxable period of the taxpayer by the director of finance as provided in subdivision (l), the director of finance may reopen such taxable period each time the taxpayer is found by the director of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the

director of finance may be reopened by the taxpayer if he files with the director of finance a true and accurate return of taxable income and credits allowed under this title for such taxable period, together with such other information as the director of finance may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the director of finance.--Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the director of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes under this title for prior years.

§ 143. Criminal penalties. (a) Attempt to evade tax.--Any individual or partnership or member or employee of any partnership, who, with intent to evade any tax or any requirement of this title or any lawful requirement of the director of finance thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated income, or to supply any information within the time required by or under the provisions of this title, or who, with like intent, shall make, render, sign or certify any false or fraudulent return, declaration or statement, or shall supply any false or fraudulent information after the service of a notice by the director of finance thereunder, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed five thousand dollars or be imprisoned not to exceed one year, or both, at the discretion of the court.

(b) Limitations.--Notwithstanding the provisions of section one hundred forty-two of the state code of criminal procedure or of any other law of this state, a prosecution for any offense under this section may be commenced at any time not later than three years after the commission of such offense provided that, if such offense is the failure to do an act required by or under any provision of this title to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date.

(c) Two or more charges.--In the prosecution of offenses under this section, if there are two or more charges against any person or

corporation, involving a violation or violations of any provision or provisions of this title, whether for the same or different taxable years, instead of returning several indictments or filing several informations, all of such charges may be joined in one indictment or information, in separate counts, and if two or more indictments are found or two or more informations are filed, the court may order them to be consolidated. If a person or corporation shall be convicted of two or more offenses constituting different crimes set forth in different counts of one indictment or information, or in separate indictments or informations consolidated as hereinbefore provided, the court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively.

(d) Miscellaneous rules.--Any prosecution under this section may be conducted in any county where the person or corporation to whose tax liability the proceeding relates resides, or has a place of business, or from which such person or corporation received any income, or in any county in which any such crime is committed. The corporation counsel of the city imposing the tax shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses under this section. If the provisions of this section conflict with those contained in any other law, this section shall control. The certificate of the director of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this title, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied. All fines levied under this section shall be paid to the director of finance and deposited in the same manner as revenues collected or received under this title.

§ 144. Armed forces relief provisions. (a) Time to be disregarded.--In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by

executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this title, in respect of the tax liability (including any interest, penalty, or addition to the tax) of such individual--

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax;

(B) payment of any income tax or any installment thereof or of any other liability to the director of finance, in respect thereof;

(C) filing a petition with the director of finance for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the director of finance;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) assessment of tax;

(G) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the director of finance in respect of tax;

(H) collection, by the director of finance, by levy or otherwise of the amount of any liability in respect of tax;

(I) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(J) any other act required or permitted under this title or specified in regulations prescribed under this section by the director of finance.

(2) The amount of any credit or refund (including interest).

(b) Action taken before ascertainment of right to benefits.--The assessment or collection of the tax imposed by this title or of any liability to the director of finance in respect of such tax, or any action or proceeding by or on behalf of the director of finance in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit

of subdivision (a).

(c) Members of armed forces dying in action.--In the case of any person who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a), or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this title shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone, and no returns shall be required in behalf of such person or his estate for such year; and the tax for any such taxable year which is unpaid at the date of his death, including interest, additions to tax and penalties, if any, shall not be assessed and if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of his estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to his widow.

§ 145. General powers of director of finance. (a) General.--The director of finance shall administer and enforce the tax imposed by this title and he is authorized to make such rules and regulations, and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of this title; and he may delegate his powers and functions under all parts of this title to one of his deputies or to any employee or employees of his department.

(b) Examination of books and witnesses.--The director of finance for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(c) Abatement authority.--The director of finance, of his own motion, may abate any small unpaid balance of an assessment of tax under this part, or any liability in respect thereof, if the director of finance determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority.--Where no questions of fact or law are involved and it appears from the records of the director of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this title, the director of finance at any time, without regard to any period of limitations, shall have the power, upon making a record of his reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States, this state and other states.--Notwithstanding the provisions of section one hundred forty-six, the director of finance may permit the secretary of the treasury of the United States or his delegates, or the proper officer of this or any other state imposing an income tax upon the incomes of individuals, or the authorized representative of any such officer, to inspect any return filed under this title or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this title, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the director of finance and such information is to be used for tax purposes only; and provided further the director of finance may furnish to the secretary of the treasury of the United States or his delegates or to the tax commission of the state of New

York or its delegates such returns filed under this title and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the director of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury or his delegates or to such tax commission or its delegates. Where the director of finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns or other information.

(f) Authority to set interest rates.--The commissioner of finance, by regulation, may set the rate of interest to be paid pursuant to sections one hundred thirty-two, one hundred thirty-three and one hundred thirty-six. Such rate shall be the same for each such section and shall be not less than six percent per annum nor more than the rate of interest prescribed by the banking board pursuant to section fourteen-a of the banking law, but if the commissioner of finance has not set such rate, interest at six percent per annum shall apply. Any rate set by the commissioner of finance shall go into effect not less than sixty days after the regulation is promulgated, and shall apply only to taxes due or paid for taxable years commencing after the effective date of such regulation.

(g) In computing the amount of any interest required to be paid under this title by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section one hundred thirty-three.

(h) Fractional parts of a dollar. -- The commissioner of finance may provide by regulation (1) that in any determination, assessment, collection, refund or credit under this title, a fractional part of a dollar may be disregarded unless it amounts to fifty cents or more, in which case it shall be increased to one dollar, and (2) that any person

making a return, report or other statement required to be filed under this title, may elect with respect to any amount required to be shown thereon, if such amount is other than a whole dollar amount, either to disregard the fractional part of a dollar or to disregard the fractional part of a dollar unless it amounts to fifty cents or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by one dollar; provided, however, that such election shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on any such return, report or other statement but shall be applicable only to the final amount required to be shown thereon.

§ 146. Secrecy requirement and penalties for violation. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the director of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this title. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this title or in any other action or proceeding involving the collection of a tax due under this title to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this title when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding

and no more. The director of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing required under section one hundred thirty-seven of this title. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this title has been recommended by the director of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns required under this title by the duly designated officers or employees of the city for purposes of an audit under this title or an audit authorized by the act enacting this title. Reports and returns shall be preserved for three years and thereafter until the director of finance orders them to be destroyed. Any violation of the provisions of this subdivision shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the city or the state, he shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

§ 147. Effect of invalidity in part. If any clause, sentence, paragraph, subsection, section or other part of this title or the application thereof to any person or circumstances, shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this title or the application of such part held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section or other part thereof directly involved in such holding, or to the person and circumstances therein involved.

§ 148. Inconsistencies with other laws. If any provision of this title is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this title shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

§ 149. Disposition of revenues*. All revenues resulting from the imposition of the taxes under this title shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

* Does not conform to section heading in schedule.