*** § 9111-a. Temporary franchise tax on certain insurance companies.** (a) Imposition. (1) For the privilege of conducting business in this state and in addition to any other requirements therefor, every insurance company subject to the franchise tax imposed by subdivision (a) of section fifteen hundred ten of the tax law, other than insurance companies whose premiums are received solely as consideration for accident and health insurance policies, shall pay a franchise tax of two percent of all gross direct premiums, less return premiums thereon, written during the "event year", as such term is defined in the following sentence, on risks located or residing in this state. For the purposes of this section, "event year" shall mean (A) the calendar year preceding the February fifth on which the budget director fails to provide a certification to the superintendent that the transfers to the general fund that have been authorized by section five thousand five hundred sixteen-e of this chapter have been made or (B) the calendar year preceding the year in which a final judicial determination invalidating some or all of the provisions of such section five thousand five hundred sixteen-e requires a return from the general fund of any or all of the amounts transferred to such fund pursuant to such section five thousand five hundred sixteen-e.

(2) Determination of direct premiums-general provisions. (A) The term "premium" includes all amounts received as consideration for insurance contracts or reinsurance contracts, other than for annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, and every other compensation for such contract. In ascertaining the amount of direct premiums upon which a tax is payable under this section there shall be first determined the amount of total gross premiums or deposit premiums or assessments, less return thereon, on all policies, certificates, renewals, policies subsequently cancelled, insurance and reinsurance executed, issued or delivered on property or risks located or resident in this state, including premiums for reinsurance assumed, and also including premiums written, procured or received in this state on business which cannot specifically be allocated or apportioned and reported as taxable premiums or which have been used as a measure of a tax on business of any other state or states. Provided, however, in the case of special risk premiums, direct premiums shall include only those premiums written, procured or received

in this state on property or risks located or resident in this state. The reporting of premiums for the purpose of the tax imposed by this section shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement filed with the superintendent of financial services pursuant to section three hundred seven of this chapter.

(B) The term "gross direct premiums," as used in this section, shall not include premiums for policies issued pursuant to section four thousand two hundred thirty-six of this chapter and premiums for insurance upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from, importation into any county, or transportation coastwide, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks.

(C) After determining the amount of total gross premiums, less returns thereon, as hereinbefore provided, there shall be deducted the following items:

(i) Such premiums, less return premiums thereon, which have been received by way of reinsurance from corporations or other insurers authorized to transact business in this state;

(ii) Dividends on such direct business, including unused or unabsorbed portions of premium deposits paid or credited to policyholders, but not including deferred dividends paid in cash to policyholders on maturing policies, nor cash surrender values.

(D) In determining the amount of direct premiums taxable in this state, all such premiums written, procured or received in this state shall be deemed written on property or risks located or resident in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums or which have been used as a measure of a tax of any other state or states, provided, however, in the case of special risk premiums, direct premiums shall include only those premiums written, procured or received in this state on property or risks located or resident in this state.

(b) Payment. Taxes due under this section shall be paid to the superintendent in such manner as the superintendent shall prescribe. The tax shall be paid in two installments. The first installment shall be due within thirty days of the time at which the superintendent determines such tax is to be paid and shall be no less than ninety percent of the tax ultimately determined to be due under this section. The balance of any tax due shall be paid on the next succeeding March twenty-fifth.

(c) Returns and reports. A return, in a form prescribed by the superintendent, shall accompany the tax payment due March twenty-fifth. In addition, the superintendent may prescribe a return to accompany the first installment.

(d) Interest and penalties. (1) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in paragraph two of this subsection, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus one percentage point, shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

(2) Underpayment penalty. If the amount of tax paid by March twenty-fifth is less than ninety-five percent of the tax ultimately determined to be due pursuant to this section, a penalty is hereby imposed equal to one hundred percent of the difference between the amount of tax actually paid and ninety-five percent of the tax ultimately determined to be due. In addition, this penalty shall bear interest at the rate set forth in paragraph one of this subsection for the period from the due date until the date the penalty is paid.

(e) Coordination with other laws. Notwithstanding the provisions of section one thousand one hundred twelve of this chapter, taxes paid pursuant to this section shall not be considered in the calculation of reciprocal taxes due this state pursuant to section one thousand one hundred twelve of this chapter. Notwithstanding the provisions of subdivision (c) of section fifteen hundred eleven of the tax law, taxes paid to other states on account of the imposition of the tax imposed by this section shall not be included in the calculation of the tax credit provided for by subdivision (c) of section fifteen hundred eleven of the tax law.

* NB Section null and void if schedule is submitted as provided for in § 5516-e of the insurance law.